

No. 12641

2656

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United States  
Court of Appeals  
for the Ninth Circuit.

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AUBREY L. CHARMAN, STANLEY CUM-  
MINGS, JOHN A. HRUTKY and JOHN F.  
SCHWELLA,

Appellants,

vs.

PAN AMERICAN AIRWAYS, INC., a Corpora-  
tion,

Appellee.

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Transcript of Record

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Appeal from the United States District Court  
Northern District of California,  
Southern Division.

FILED

OCT 24 1950

PAUL P. O'BRIEN,  
CLERK



No. 12641

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Court of Appeals  
for the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

GLADSTEIN, ANDERSEN, RESNER &  
SAWYER, and NORMAN LEONARD,

240 Montgomery Street,  
San Francisco, California,

Attorneys for Plaintiffs and Appellants.

ATHEARN, CHANDLER, HOFFMAN and  
ANGELL,

Balboa Building,  
593 Market Street,  
San Francisco, California,

Attorneys for Defendants and Appellees.

In the Superior Court of the State of California in  
and for the City and County of San Francisco

No. 383485

AUBREY L. CHARMAN; STANLEY CUM-  
MINGS; JOHN A. HRUTKY; and JOHN F.  
SCHWELLA,

Plaintiffs,

vs.

PAN-AMERICAN AIRWAYS, INC., a Corpora-  
tion; FIRST DOE; SECOND DOE; and  
THIRD DOE, a Corporation,

Defendants.

## COMPLAINT FOR DAMAGES FOR BREACH OF CONTRACT

Come now plaintiffs above named, and for cause  
of action against defendants, allege:

### I.

That plaintiffs do not know the true names of  
defendants sued herein under the fictitious names of  
First Doe, Second Doe, and Third Doe, a corpora-  
tion, and pray leave to substitute said true names  
when ascertained.

### II.

That defendant Pan-American Airways, Inc., a  
corporation, is a corporation organized and existing  
under and by virtue of the laws of a state unknown  
to plaintiffs and maintaining an office and place of

business and doing business in the City and County of San Francisco, State of California.

### III.

That plaintiff Aubrey L. Charman was first employed by the defendants on or about October 7, 1935, as an Assistant Radio Operator at a salary of approximately \$125 per month. Said plaintiff thereafter continued in the employ of the defendants in various capacities in the defendants' Communications Department and received various increases in salary from time to time until by December of 1940 said plaintiff was earning approximately \$200 per month as a Flight Radio Officer; incident to said plaintiff's employment and as a part thereof, said plaintiff had certain seniority privileges and other advantages, including the right to severance pay in the event of discharge.

### IV.

That said plaintiff is informed and believes and therefore alleges that during the latter part of the year 1940 and the early part of the year 1941, defendants established a program of training certain employees in their Communications Department to act as Non-Pilot Navigators; said plaintiff is informed and believes and therefore alleges that this training program was initiated by defendants in order to further defendants' interests because of the need which defendants had at the said time for trained navigators.

## V.

That on or about the first day of January, 1941, pursuant to said program, defendants assigned said plaintiff duties as Non-Pilot Navigator in lieu and instead of his duties as a Flight Radio Officer, and that on or about the said last mentioned date, plaintiff entered upon his said newly assigned duties.

## VI.

That on or about the 21st day of January, 1941, at San Francisco, California, the defendants executed a written memorandum to said plaintiff in which the defendants agreed as follows:

“This assignment may or may not be of a temporary nature, however, in the event that it is of a temporary nature and it is found no longer necessary to assign you as Navigator, you will resume your duties as Flight Radio Officer with no loss of seniority or other advantages which you now have.”

## VII.

That said plaintiff entered upon his duties as a Non-Pilot Navigator under the direction and control of the defendants, and on or about October 16, 1942, said plaintiff was transferred from the defendants' Communications Department to the defendants' Operations Department as a Non-Pilot Navigator and thereupon entered upon his duties as a Non-Pilot Navigator in said Operations Department.



VIII.

That on or about the 22nd day of April, 1943, at San Francisco, California, the defendants executed another written memorandum to said plaintiff, in which the defendant agrees as follows:

“Pan American Airways System

“Memorandum

“April 22, 1943

“Division Operations Manager

“Communication Supt., Acting

“Transpacific

“Treasure Island

“Operations

“Treasure Island

“This refers to a joint letter written by the Division Operations Manager and Division Communication Superintendent of the Transpacific Division to Communications personnel who were qualifying as Navigators.

“That letter stated, among other things, that upon checking out as a Navigator you would receive \$25.00 for navigation duties, in addition to your base pay and flight allowance, in accordance with the Communication pay scale. That letter also stated that you would be eligible for increases in base salary in line with the policy of the Communication Department.

“At that time it was not known whether this would be a permanent or temporary assignment and you were informed by that letter that if it were no

longer necessary to assign you as a Navigator, you would assume your duties as a Flight Radio Officer without loss of seniority or advantages which you had at that time.

“On October 16, 1942, you were transferred to the Operations Department and your salary adjusted so that it would be equivalent to your base pay and flight allowance on the Communications Department scale, plus the \$25.00 for navigation duties.

“The purpose of this letter is to confirm our verbal understanding when the transfer was made, that you would henceforth be on the Navigators’ pay scale, rather than the pay scale of the Communication Department.

“After the war, if the position of Non-Pilot Navigator should be abolished, we will reestablish you in the Communication Department in a grade commensurate with your length of service with the company after permitting you a period to qualify professionally with equipment and procedure current at that time.

“/s/ J. H. TILTON,

“J. H. Tilton.

“/s/ H. O. GENTRY,

“H. O. Gentry.

“CC: Division Manager.”

## IX.

That thereafter and until the 15th day of November, 1948, said plaintiff performed his duties as a Non-Pilot Navigator for the defendants in their



Operations Department and from time to time received various increases in pay so that at one time he was earning as much as \$625 per month. His rate of pay on or about said 15th day of November, 1948, was \$600 per month.

X.

That on or about November 15, 1948, the defendants terminated said plaintiff's employment as a Non-Pilot Navigator in the defendants' Operations Department.

XI.

That on or about the 4th day of December, 1948, said plaintiff requested in writing that defendants reinstate him in their Communciation Department in a grade commensurate with his length of service with the defendants as provided for in the agreements of January 21, 1941, and April 22, 1943, hereinabove referred to.

XII.

That on or about December 6, 1948, contrary to the terms and provisions of the aforesaid agreements, defendants refused to transfer said plaintiff to their Communications Department and to re-establish him in said Department as they had agreed to do in the said agreements, or to employ the said plaintiff in any other capacity.

XIII.

That said plaintiff has at all times done and performed all of the terms and conditions required of him to be done and performed by the aforesaid

agreements. Said plaintiff is informed and believes and therefore alleges that his services for the defendants in all capacities have at all times been of a satisfactory nature and character and that the defendants' failure to transfer said plaintiff to the Communications Department and to re-establish him therein as in the aforesaid agreements provided is without just cause.

#### XIV.

That if the defendants had transferred said plaintiff to the Communications Department and had re-established him therein as provided for in the aforesaid agreements, said plaintiff would have on or about December 4, 1948, and continuously thereafter to the date hereof and for an indefinite period in the future, been gainfully employed by the defendants and would have earned approximately \$600 per month. That by reason of defendants' breach of the agreements as aforesaid, said plaintiff has suffered damages in the amount of \$150,000 in lost wages.

#### XV.

That if the defendants had transferred said plaintiff to the Communications Department and re-established him therein as provided for in the aforesaid agreements, said plaintiff would have had seniority privileges, severance pay privileges and other privileges in connection therewith, the reasonable value of which is \$10,000.

Wherefore, this plaintiff prays judgment against the defendants, and each of them, in the sum of

\$160,000 damages, for his costs of suit herein, and for such other and further relief as to the Court may seem just in the premises.

As and for a Second, Separate and Distinct Cause of Action, plaintiff Stanley Cummings alleges as follows:

I.

Incorporates by reference all of the allegations of Paragraphs I, II, IV, VI, VII, VIII, IX, X, XII, XIII and XV of the first cause of action herein.

II.

That plaintiff Stanley Cummings was first employed by the defendants on or about December 30, 1935, as an Assistant Radio Operator at a salary of approximately \$125 per month. That said plaintiff thereafter continued in the employ of defendants in various capacities in the defendants' Communications Department and received various increases in salary from time to time until by February of 1941, said plaintiff was earning approximately \$200 per month as a Flight Radio Officer; incident to said plaintiff's employment and as a part thereof, said plaintiff had certain seniority privileges and other advantages, including the right to severance pay in the event of discharge.

III.

That on or about the 1st day of February, 1941, pursuant to the program referred to in Paragraph IV of plaintiff Charman's cause of action, defend-

ants assigned said plaintiff Cummings duties as a Non-Flight Navigator in lieu and instead of his duties as a Flight Radio Officer, and that on or about said last mentioned date, said plaintiff entered upon his said newly assigned duties.

#### IV.

That on or about the 2nd day of December, 1948, said plaintiff requested in writing that the defendants reinstate him in their Communications Department in a grade commensurate with his length of service with the defendants, as provided for in the agreements of January 21, 1941, and April 22, 1943, hereinabove referred to.

#### V.

That on or about the 6th day of December, 1948, contrary to the terms and provisions of the aforesaid agreements, defendants refused to transfer said plaintiff to the Communications Departments and to re-establish him in that Department as they had agreed to do in said agreements or to employ said plaintiff in any other capacity.

#### VI.

That if the defendants had transferred said plaintiff to the Communications Department and had re-established him therein as provided for in the aforesaid agreements, said plaintiff would have, on or about December 2, 1948, and continuously thereafter to the date hereof and for an indefinite period in the future, been gainfully employed by the defendants and would have earned approximately \$600

per month. That by reason of defendants' breach of the agreements as aforesaid, said plaintiff has suffered damages in the amount of \$150,000 in lost wages.

Wherefore, plaintiff Stanley Cummings prays judgment against the defendants, and each of them, in the sum of \$160,000, for his costs of suit herein, and for such other and further relief as to the Court may seem just in the premises

As and for a Third, Separate and Distinct Cause of Action, plaintiff John A. Hrutky alleges as follows:

I.

Incorporates by reference all of the allegations of Paragraphs I, II, IV, VII, VIII, IX, X, XII, XIII and XV of the first cause of action herein.

II.

That plaintiff John A. Hrutky was first employed by the defendants on or about July 15, 1937, as Assistant Radio Operator at a salary of approximately \$125 per month. That said plaintiff thereafter continued in the employ of defendants in various capacities in the defendants' Communications Department and received various increases in salary from time to time until by February of 1941 said plaintiff was earning approximately \$200 per month as a Flight Radio Officer; incident to said plaintiff's employment and as a part thereof, said plaintiff had certain seniority privileges and other



advantages, including the right of severance pay in the event of discharge.

### III.

That on or about the 1st day of February, 1941, pursuant to the program referred to in Paragraph IV of plaintiff Charman's cause of action, defendants assigned plaintiff Hrutky duties as a Non-Pilot Navigator in lieu and instead of his duties as a Flight Radio Officer and that on or about said last mentioned date, said plaintiff entered upon his said newly assigned duties.

### IV.

That on or about the 4th day of December, 1948, said plaintiff requested in writing that the defendants reinstate him in their Communications Department in a grade commensurate with his length of service with the defendants, as provided for in the agreements of January 21, 1941, and April 22, 1943, hereinabove referred to.

### V.

That on or about December 6, 1948, contrary to the terms and provisions of the aforesaid agreements, defendants refused to transfer said plaintiff to the Communications Department and to re-establish him in that Department as they had agreed to do in said agreements or to employ said plaintiff in any other capacity.

### VI.

That if the defendants had transferred said plaintiff to the Communications Department and had

re-established him therein as provided for in the aforesaid agreements, said plaintiff would have, on or about December 4, 1948, and continuously thereafter to the date hereof and for an indefinite period in the future, been gainfully employed by the defendants and would have earned approximately \$600 per month. That by reason of defendants' breach of the agreements as aforesaid, said plaintiff has suffered damages in the amount of \$150,000 in lost wages.

Wherefore, plaintiff John A. Hrutky prays judgment against defendants, and each of them, in the sum of \$160,000, for his costs of suit herein, and for such other and further relief as to the Court may seem just in the premises.

As and for a Fourth, Separate and Distinct Cause of Action, plaintiff John F. Schwella alleges as follows:

### I.

Incorporates by reference all of the allegations of Paragraphs I, II, IV, VII, VIII, IX, X, XII, XIII and XV of the first cause of action herein.

### II.

That plaintiff John F. Schwella was first employed by the defendants on or about November 16, 1937, as an Assistant Radio Operator at a salary of approximately \$125 per month. That said plaintiff thereafter continued in the employ of defendants in various capacities in the defendants' Communications Department and received various increases in

salary from time to time until by July of 1942, said plaintiff was earning approximately \$200 per month as a Flight Radio Officer; incident to said plaintiff's employment and as a part thereof, said plaintiff had certain seniority privileges and other advantages, including the right to severance pay in the event of discharge.

### III.

That on or about the 1st day of July, 1942, defendants assigned said plaintiff, pursuant to the program referred to in Paragraph IV of plaintiff Charman's cause of action, duties as a Non-Pilot Navigator in lieu and instead of his duties as a Flight Radio Officer and that on or about said last mentioned date, said plaintiff Hrutky entered upon his newly assigned duties as a Non-Pilot Navigator.

### IV.

That on or about the 1st day of December, 1948, said plaintiff requested in writing that the defendants reinstate him in their Communications Department in a grade commensurate with his length of service with the defendants, as provided for in the agreements of January 21, 1941, and April 22, 1943, hereinabove referred to.

### V.

That on or about December 6, 1948, contrary to the terms and provisions of the aforesaid agreements, defendants refused to transfer said plaintiff to the Communications Department and to re-establish him in that Department as they had agreed to



do in said agreements or to employ said defendant in any other capacity.

VI.

That if the defendants had transferred said plaintiff to the Communications Department and had re-established him therein as provided for in the aforesaid agreements, said plaintiff would have, on or about December 1, 1948, and continuously thereafter to the date hereof and for an indefinite period in the future, been gainfully employed by the defendants and would have earned approximately \$600 per month. That by reason of defendants' breach of the agreements as aforesaid, said plaintiff has suffered damages in the amount of \$150,000 in lost wages.

Wherefore, plaintiff John F. Schwella prays judgment against defendants, and each of them, in the sum of \$160,000, for his costs of suit herein, and for such other and further relief as to the Court may seem just in the premises.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,

By NORMAN LEONARD,  
Attorneys for Plaintiffs.

State of California,  
City and County of San Francisco—ss.

Norman Leonard, being first duly sworn, deposes and says:

That he is the attorney for the plaintiffs in the

within action; that he makes this verification for and on behalf of said plaintiffs for the reason that said plaintiffs are presently outside of the county in which affiant has his office; that affiant has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to such matters that he believes it to be true.

NORMAN LEONARD.

Subscribed and sworn to before me this 24th day of January, 1949.

Sig. attested on orig. Doc. by

ALICE C. MORSE,

Notary Public in and for the City and County of  
San Francisco, State of California.

In the Superior Court of the State of California,  
in and for the City and County of San Francisco

No. 383485

AUBREY L. CHARMAN; STANLEY CUM-  
MINGS; JOHN A. HRUTKY; and JOHN F.  
SCHWELLA,

Plaintiffs,

vs.

PAN AMERICAN AIRWAYS, INC., a Corpora-  
tion; FIRST DOE, SECOND DOE and  
THIRD DOE, a Corporation,

Defendant.

Action brought in the Superior Court of the  
State of California in and for the City and County  
of San Francisco, and the complaint filed in the office  
of the County Clerk of said City and County.

GLADSTEIN, ANDERSEN, RESNER &  
SAWYER,

Attorneys for Plaintiff.

### SUMMONS

The People of the State of California Send Greet-  
ing To:

Pan American Airways, Inc., a Corporation; First  
Doe; Second Doe; and Third Doe, a Corporation,  
Defendants.

You Are Hereby Directed to appear and answer  
the complaint in an action entitled as above, brought

against you in the Superior Court of the State of California, in and for the City and County of San Francisco, within ten days after the service on you of this summons—if served within this City and County; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said Plaintiff—will take judgment for any money or damages demanded in the complaint as arising upon contract or will apply to the Court for any other relief demanded in the complaint.

Given under my hand and seal of the Superior Court at the City and County of San Francisco, State of California.

Dated January 25, 1949.

MARTIN MONGAN,  
Clerk.

[Seal] By /s/ D. T. WOOD,  
Deputy Clerk.

In the District Court of the United States for the  
Northern District of California, Southern Di-  
vision

No. 28639H

AUBREY L. CHARMAN; STANLEY CUM-  
MINGS; JOHN A. HRUTKY and JOHN F.  
SCHWELLA,

Plaintiffs,

vs.

PAN AMERICAN AIRWAYS, INC., a Corpora-  
tion; FIRST DOE; SECOND DOE; and  
THIRD DOE, a Corporation,

Defendants.

PETITION FOR REMOVAL OF  
CIVIL ACTION

Comes now Pan American Airways, Inc., a cor-  
poration, defendant above-named, and files this ver-  
ified petition for removal, and respectfully alleges  
as follows:

I.

That there is pending in the Superior Court of  
the State of California, in and for the City and  
County of San Francisco, to wit, within the district  
and division of the above-entitled court, a civil ac-  
tion brought by the above-entitled plaintiffs against  
the above-entitled defendants, and numbered therein  
No. 383,485.

II.

That process in said action was served upon this  
defendant on the 8th day of February, 1949.

## III.

That the said plaintiffs are each citizens of the State of California; that defendant Pan American Airways, Inc., is a corporation incorporated under the laws of the State of New York; and that there are no other parties in interest properly joined or served as defendants in said action.

## IV.

That the matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000).

## V.

That attached hereto are copies of all process, pleadings and orders served upon said defendant in said action.

## VI.

That this petition is accompanied by a bond with good and sufficient surety conditioned that the defendant will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

Wherefore, said defendant prays that said action be removed to this court, and that this court issue all necessary orders in connection therewith.

ATHEARN, CHANDLER & FARMER, HOFF-  
MAN & ANGELL,

/s/ F. G. ATHEARN,

/s/ LEIGH ATHEARN,

Attorneys for Defendant.



The United States of America,  
Northern District of California—ss.

Leigh Athearn, being first duly sworn, deposes and says: That he is one of the attorneys for the defendant Pan American Airways, Inc., in the foregoing action; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein alleged upon information or belief, and as to those matters he believes it to be true; and that this verification is made by affiant as such attorney because he is familiar with the facts stated in said petition.

/s/ LEIGH ATHEARN.

Subscribed and sworn to before me this 18th day of February, 1949.

[Seal]     /s/ VIOLET NEURENBURG,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission Expires Jan. 3, 1951.

[Endorsed]: Filed February 21, 1949.

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[Title of District Court and Cause.]

### ANSWER

Comes now defendant Pan American Airways, Inc., and for answer to plaintiffs' complaint herein, admits, denies and alleges as follows:

## Answer to Complant of Plaintiff Charman

## I.

Answering paragraph I of the complaint of plaintiff Aubrey L. Charman, defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

## II.

Answering paragraph II of the complaint of said plaintiff, defendant alleges that it is a corporation organized and existing under and by virtue of the laws of the State of New York, and is lawfully doing business in the State of California.

## III.

Answering paragraph III of the complaint of said plaintiff, defendant admits the allegations thereof, save and except to deny that incident to said plaintiffs' employment during the years from 1935 to and including 1940, or as a part thereof, or otherwise, said plaintiff had any legally binding seniority privileges or similar rights, or the right to severance pay of any kind.

## IV.

Answering paragraph IV of the complaint of said plaintiff, defendant denies the allegations thereof; and defendant alleges that in the year 1940 and for several years prior thereto defendant was engaged and now is engaged in the business of rendering international air transport service; that until the latter part of 1940 it was the custom and practice



of defendant to employ, as pilots of the aircraft engaged in said service, persons who were not only skilled and qualified to pilot such aircraft, but also trained and qualified in the art of navigation; that in the latter part of 1940, due to increased wartime demands upon the service rendered by defendant, including demands of the armed services, it became necessary for defendant to employ greatly expanded numbers of pilots to operate the aircraft engaged in such service; that it was not then possible to obtain in sufficient numbers pilot personnel who were also trained as navigators; that it was therefore necessary for defendant to supplement the said flight crews by employing and adding thereto a member of the crew designated as a non-pilot navigator (sometimes designated as a professional navigator,) who undertook navigational duties aboard said aircraft; that defendant hired qualified persons to take jobs as non-pilot navigators, and further initiated a program to train as non-pilot navigators persons then in the employ of defendant who were qualified to receive such training and who wished to become non-pilot navigators in order to receive increased pay.

#### V.

Answering paragraph V of the complaint of said plaintiff, defendant denies the allegations thereof; and defendant alleges that on or about the date therein alleged said plaintiff having received training as a non-pilot navigator, applied for transfer to duty as a non-pilot navigator, and that said request was granted by defendant.

## VI.

Answering paragraph VI of the complaint of said plaintiff, defendant admits the allegations thereof, save and except to deny that said memorandum dated January 21, 1941, constituted an agreement or undertaking by defendant, and to allege that said memorandum was intended as, and would reasonably have been understood as, merely the statement of future plan or intention on the part of defendant, and was actually so understood by the parties, and was not intended, would not reasonably be understood, and actually was not understood, to be an agreement or promise by defendant of a binding legal nature.

## VII.

Answering paragraph VII of the complaint of said plaintiff, defendant admits the allegations thereof.

## VIII.

Answering paragraph VIII of the complaint of said plaintiff, defendant admits the allegations thereof, save and except to deny that said memorandum dated April 22, 1943, constituted an agreement or undertaking by defendant, and to allege that said memorandum was intended as, and would reasonably have been understood as, merely the statement of future plan or intention on the part of defendant, and was actually so understood by the parties, and was not intended, and would not reasonably be understood and actually was not under-

stood, to be an agreement or promise by defendant of a binding legal nature.

IX.

Answering paragraph IX of the complaint of said plaintiff, defendant admits the allegations thereof.

X.

Answering paragraph X of the complaint of said plaintiff, defendant admits the allegations thereof.

XI.

Answering paragraph XI of the complaint of said plaintiff, defendant admits the allegations thereof.

XII.

Answering paragraph XII of the complaint of said plaintiff, defendant denies the allegations thereof, save and except to admit that defendant did not and has not re-employed said plaintiff.

XIII.

Answering paragraph XIII of the complaint of said plaintiff, defendant denies the allegations thereof, save and except to admit that the services of said plaintiff were of a satisfactory nature and character.

XIV.

Answering paragraph XIV of the complaint of said plaintiff, defendant denies the allegations thereof.

XV.

Answering paragraph XV of the complaint of

said plaintiff, defendant denies the allegations thereof.

Answer to Complaint of Plaintiff Cummings

I.

Answering I of the complaint of plaintiff Stanley Cummings, defendant incorporates by reference the allegations of paragraph I, II, IV, VI, VII, VIII, IX, X, XII, XIII and XV of its answer to the complaint of plaintiff Aubrey L. Charman.

II.

Answering paragraph II of the complaint of said plaintiff, defendant incorporates by reference the allegations of paragraph III of its answer to the complaint of plaintiff Aubrey L. Charman.

III.

Answering paragraph III of the complaint of said plaintiff, defendant incorporates by reference the allegations of paragraph V of its answer to the complaint of plaintiff Aubrey L. Charman.

IV.

Answering paragraph IV of the complaint of said plaintiff, defendant incorporates by reference the allegations of paragraph XI of its answer to the complaint of plaintiff Aubrey L. Charman.

V.

Answering paragraph V of the complaint of said plaintiff, defendant incorporates by reference the

allegations of paragraph XII of its answer to the complaint of plaintiff Aubrey L. Charman.

VI.

Answering paragraph VI of the complaint of said plaintiff, defendant incorporates by reference the allegations of paragraph XIV of its answer to the complaint of plaintiff Aubrey L. Charman.

Answer to Complaint of Plaintiff Hrutky

I.

Answering the complaint of plaintiff John A. Hrutky, defendant incorporates by reference its answer to the complaint of plaintiff Stanley Cummings as and for its answer to each paragraph bearing the similar number in the complaint of plaintiff John A. Hrutky.

Answer to Complaint of Plaintiff Schwella

I.

Answering the complaint of plaintiff John F. Schwella, defendant incorporates by reference its answer to the complaint of plaintiff Stanley Cummings as and for its answer to each paragraph bearing the similar number in the complaint of plaintiff John F. Schwella.

First Separate Answer

As and for a first separate answer to the complaint of each of said plaintiffs, defendant alleges:



## I.

Defendenat incorporates by reference paragraphs IV and V of its answer to the complaint of Aubrey L. Charman.

## II.

That defendant is informed and believes that on or about the 27th day of October, 1944, the plaintiffs and each of them executed and delivered to the Pan American Airways Navigators' Association, an unincorporated association, an authorization form reading as follows:

“I hereby agree that the Board of Directors of the Pan American Airways Navigators Association shall represent me in the negotiation of a contract with Pan American Airways concerning wages and working conditions.

“I further agree that the said Board of Directors, or any agent or agents appointed by the Board, shall have full authority to come to any agreement which they consider just and reasonable.”

## III.

That on or about the 20th day of December, 1944, the defendant issued a memorandum to all persons then employed by defendant as navigators stating that, when the defendant resumed its policy to use navigators who also were pilots, the defendant would exercise its best efforts to place navigators who were not also pilots in other available positions, in the defendant's employ, for which they were qualified; and that said memorandum further ad-

vised such navigators of the method and procedure by which they might apply for such other positions.

#### IV.

That on or about the 4th day of January, 1945, the said Pan American Airways Navigators' Association, on behalf of the plaintiffs (and certain other persons then in defendant's employ) executed an agreement with defendant (in which said agreement the defendant was referred to as "the Company") governing the wages, hours and working conditions, including seniority and reinstatement rights of the plaintiffs (and such other persons); that said agreement provided in paragraph (c) of section 3 thereof as follows:

"In addition, the Company will exercise its best efforts to place Navigators in available positions for which they are qualified when the the policy of using Pilot-Navigators is resumed. The method by which the Company will endeavor to make such assignments available to Navigators and the procedure for giving additional training to Navigators who have been selected will be that described in the memorandum on this subject dated December 20, 1944."

#### V.

That it was the effect and purpose of said agreement dated the 4th day of January, 1945, and it was so understood by the parties, and reasonably would be so understood, that the same replaced, superseded, and was a novation of any and all agree-

ments or understandings previously existing, if any such existed, between the defendant and the employees who were parties thereto and the beneficiaries thereof (including the plaintiffs and each of them) affecting wages, hours and working conditions, including seniority and reinstatement rights; that the rights of plaintiffs, if any they had, under the memoranda dated the 21st day of January, 1941, and the 22nd day of April, 1943, referred to in their complaints, were replaced, superseded and subject to a novation by said agreement dated the 4th day of January, 1945; that thereafter the plaintiffs had no rights to seniority or reinstatement save and except as provided in said agreement dated the 4th day of January, 1945; that the plaintiffs and each of them accepted the benefits of said agreement dated on the 4th day of January, 1945, and ratified and confirmed the making of said agreement on their behalf.

## VI.

That said Pan American Airways Navigators' Association thereafter became affiliated with and became a part of the Transport Workers Union of America (CIO); that the plaintiffs and each of them continued to designate and authorize said Transport Workers Union of America (CIO) to represent the plaintiffs and each of them for purposes of negotiating and signing, on behalf of plaintiffs and others, agreements with the defendant governing the wages, hours and working conditions, including seniority and reinstatement rights; that on the 31st day of December, 1946, an agreement



was signed between the defendant and the said Transport Workers Union of America (CIO,) representing the plaintiffs and others, which replaced, superseded and was a novation of said agreement dated the 4th day of January, 1945.

### Second Separate Answer

As and for a second, separate answer to the complaint of each of said plaintiffs, defendant alleges:

#### I.

That at all times mentioned in said complaint the defendant has been, and now is, engaged in business as a common carrier by air in interstate and foreign commerce, and further as a carrier by air transporting mail for and under contract with the United States Government; and that the defendant therefore during said period continuously has been and now is subject to the terms and provisions of the act of Congress known as the Railway Labor Act (45 U.S. Code §§151 to 163, and 181 to 188).

#### II.

That shortly before the 17th day of April, 1946, the Flight Radio Officers Association, an unincorporated association, furnished evidence to the defendant, in conformity with the provisions of the Railway Labor Act, that the Flight Radio Officers Association had been duly designated as the representative of the flight radio officers and the flight radio officer trainees employed by the defendant and, on their behalf, to negotiate and conclude an

employment agreement with the defendant covering hours of work, wages and other working conditions.

### III.

That on or about the 17th day of April, 1946, the defendant and said Flight Radio Officers Association entered into an agreement designated "Agreement for the Establishment of a System Seniority Board for Flight Radio Officers"; that said agreement provided, in part, as follows:

"(b) For the purpose of compiling an initial Seniority List on a System-wide basis for Flight Radio Officers in the employ of Pan American Airways, Inc., a Seniority Board is hereby appointed, consisting of four members, two of whom are to be appointed by the Company and two by the Flight Radio Officers Association.

"(c) The Seniority Board so named shall as soon as possible compile separate lists of Active and Inactive Flight Radio Officers who are or have been employed by the Pan American Airways, Inc., in the order of their seniority.

"(d) The Inactive List shall include former Flight Radio Officers who are now in other positions within the Communications Department and those who have been released due to reduction in force.

"(e) The Seniority Board in the establishment of a Seniority List shall adhere to the seniority provisions in this Agreement, provided that where records are not conclusive or are missing, the Seniority

Board may use whatever means it deems necessary to supplement such records.

“(f) The Seniority Board shall convene within sixty (60) days after the signing of this Agreement and compile a Seniority List on which shall appear the names of employees, Active or Inactive, entitled to seniority. The completed Seniority List shall be posted on all bulletin boards where Flight Radio Officers are based.

“(g) An employee shall be privileged to protest his position on the Seniority List provided that such protest is in writing outlining the reasons therefor and is made to the Seniority Board within sixty (60) days after the Seniority List is posted, and provided further that such protests do not conflict with any provisions of this Agreement.

“(h) Within sixty (60) days after the time period to file protest with the Board has ended the Seniority Board will convene, if necessary, and shall make all determinations of questions contained in seniority protests.

“(i) The determination of the Board relating to Seniority protests shall be final and binding on the employee and the Company.”

#### IV.

That after the execution of said agreement dated the 17th day of April, 1946, the defendant proposed to the System Seniority Board, therein established, names of the employees affected and data for the determination of the seniority rank or status of each; and that included upon the list so proposed by

defendant were the names of each of the plaintiffs.

#### V.

That on or about the 26th day of June, 1946, the defendant and said Flight Radio Officers Association found that they were unable to agree upon the terms of a collective bargaining agreement then being negotiated between them; that upon said date they applied to the National Mediation Board for mediation services, all as provided in said Railway Labor Act; that said National Mediation Board accepted said matter as N.M.B. case number A2381, and proceeded to act as provided in said Railway Labor Act; that on or about October 28, 1946, in the presence of a representative of said National Mediation Board, said parties reached an agreement; and that on or about the 4th day of November, 1946, said matter was ordered closed and terminated by said National Mediation Board.

#### VI.

That said agreement dated the 28th day of October, 1946, between the defendant and the Flight Radio Officers Association, as mediated by and executed in the presence of said National Mediation Board, governed the hours of work, wages and other working conditions of flight radio officers and flight radio officer trainees in the defendant's employ; that as respects seniority said agreement confirmed and adopted said agreement dated the 17th day of April, 1946; and that within thirty (30) days after the execution of said agreement dated the 28th day of October, 1946, the defendant filed the same with

the National Mediation Board, as required by said Railway Labor Act.

## VII.

That on or about the 19th day of November, 1946, the said System Seniority Board issued the initial seniority list for flight radio officers in the employ of defendant; and that the names of none of the plaintiffs appeared thereon.

## VIII.

That said Flight Radio Officers Association thereafter affiliated with and became a part of the Transport Workers Union of America (CIO,) which thereafter furnished evidence that it continued to be duly designated as the representative of the flight radio officers and flight radio officer trainees employed by the defendant; that on the 6th day of February, 1948, the defendant and the said Transport Workers Union of America (CIO) entered into an agreement, superseding the said agreement dated the 28th day of October, 1946, governing the hours of work, wages and other working conditions of flight radio officers and flight radio officer trainees in the employ of defendant.

## IX.

That said agreement dated the 6th day of February, 1948, provided in Article 9 thereof as follows:

“(a) Seniority hereunder shall be determined by the Flight Radio Officers’ System Seniority List of Pan American Airways, Inc., dated April 11, 1947, and as hereafter adjusted in accordance with the provisions of this Agreement.



“(b) A Seniority Board consisting of two members designated by the Union and two members designated by the Company shall meet twice each year for the purpose of adding and removing names, to act upon protests and to make such adjustments in the Flight Radio Officer System Seniority List as may be necessary and proper under this Agreement.

“(c) A new Flight Radio Officer hereunder shall accrue seniority from the date of departure on a productive flight; that is, a flight on which he is assigned not solely for his own training. When two or more employees depart on their first productive flight on the same date, their relative seniority standing shall be determined by lottery.

“(d) When the Seniority Board has completed the adjusted Flight Radio Officer System Seniority List, it shall cause to be posted copies of the List at all Fields where employees hereunder are based, and employees shall have the right to protest inaccuracies or omissions within sixty (60) days from the date of posting. A protest, other than typographical error, shall not be valid if the above seniority Board has once acted on it.”

## X.

That within thirty (30) days after the execution of said agreement dated the 6th day of February, 1948, the defendant filed the same with the National Mediation Board, as required by law; and that said agreement is now in full force and effect.



## XI.

That the name of none of the plaintiffs appears upon the said Flight Radio Officers' System Seniority List; that the said System Seniority Board caused said list to be posted as required by said agreements hereinabove set forth; that none of the plaintiffs protested or attempted to protest the omission of his name therefrom, either as required by said agreements or otherwise.

## XII.

That the defendant is, as hereinabove alleged, prevented by law, to wit, by said agreement dated the 6th day of February, 1948, as executed in the presence of and duly filed with the National Mediation Board, from employing any of the plaintiffs as a flight radio officer.

## XIII.

That, further, even if each of the plaintiffs had been placed upon said System Seniority List, under an interpretation of said agreements most favorable to said plaintiffs, none of the plaintiffs would have sufficient accrued seniority thereunder to make him eligible for reinstatement to a position as flight radio officer in the defendant's employ, since there are men with greater accrued seniority than any plaintiff might have who are on "laid-off status," that is, seeking reinstatement with the defendant as flight radio officers but unable to obtain the same because of lack of available positions.

## Third Separate Answer

As and for a third separate answer to the complaint of each of said plaintiffs, defendant alleges:

## I.

That on several occasions since the middle of 1946, the defendant has offered to each of the plaintiffs employment in the communications department of defendant at a grade commensurate with the length of service of each said plaintiff; and that each said plaintiff refused and declined to accept said offers when made.

## Fourth Separate Answer

As and for a fourth separate answer to the complaint of each of said plaintiffs, defendant alleges:

## I.

Defendant incorporates by reference paragraphs II, IV, V and VI of its first separate answer above set forth.

## II.

That on or about the 14th day of July, 1948, said Transport Workers Union of America (CIO,) acting for and on behalf of the plaintiffs and others, entered into an agreement with the defendant, which said agreement submitted to a board of arbitration for decision the question of what rights of seniority or rights to retention of employment, if any, the plaintiffs and others might have as against the defendant.

III.

That on or about the 10th day of November, 1948, said board of arbitration rendered its award, which stated in paragraph 1 as follows:

“1. It is the decision and award of this Board of Arbitration that Pan American Airways, Inc., shall not be required to retain the professional navigators in its employ, except for work in accordance with the established practice as ground instructors in navigation. At the discretion of the Company they may be used as navigation instructors in flight.”

That said award provided further in paragraphs 3, 4 and 5 thereof as follows:

“3. Upon dismissal each of the professional navigators employed by the Company will be given as severance pay the sum of \$2,000 which will include the amount that would be payable under Article 18(f) of the parties' agreement of December 31, 1946; they will also receive payment for vacation earned or accrued but not taken and refunds due under the Company insurance and retirement plans.

“4. Provisions of the agreement of the parties on seniority and related matters inconsistent with this award are deemed superseded or amended accordingly.

“5. The provisions of this award shall become effective as of the close of business on November 15, 1948.”

## IV.

That on or about the 15th day of November, 1948, the services of each of the plaintiffs were terminated by the defendant, and that each of said plaintiffs was then paid by defendant the sum of \$2,000 as severance pay, plus payment for vacation earned or accrued but not taken and refunds due under the defendant's insurance and retirement plans.

Wherefore, defendant prays that none of the plaintiffs take anything by their said complaints, and that defendant be dismissed with its costs.

Dated: March 7, 1949.

ATHEARN, CHANDLER & FARMER, HOFF-  
MAN & ANGELL,

/s/ F. G. ATHEARN,

/s/ LEIGH ATHEARN,

Attorneys for Defendant.

Receipt of a copy of the foregoing answer is admitted this 7th day of March, 1949.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,  
Attorneys for Plaintiffs.

[Endorsed]: Filed March 9, 1949.

[Title of District Court and Cause.]

Order Directing Amendment of Pleadings and Limiting Issues After Pretrial Conference

In this action, the Court having ordered the attorneys for the respective parties hereto appear before it for pretrial conference; and said pretrial conference having been held on October 17 and 31, 1949; it is hereby

Ordered as follows:

1. Amendment of Pleadings.

That pursuant to the defendant's written motion dated April 28, 1949, leave is granted to the defendant to amend and supplement its answer by adding Paragraph XIV to the Second Separate Answer as set forth in said motion, and said Answer is hereby deemed amended and supplemented as therein set forth.

2. Admissions of Fact.

That the parties hereto have made the following admissions of fact:

(a) That during the entire period during which the plaintiffs were originally employed by defendant as flight radio officers (that is, prior to the time they became navigators), there was no written contract of employment in effect between the plaintiffs and the defendant;

(b) That at all times from and after October 27, 1944, to the time of the date of termination of their respective employments with the defendant, each of the plaintiffs was a member of the Transport



Workers of America, CIO (or its predecessor organization, the Pan American Airways Navigators' Association) ;

(c) That at all times mentioned in the complaint the defendant has been subject to the Railway Labor Act, as a carrier by air ;

(d) That data regarding the employment of each of the plaintiffs was submitted by the defendant to the System Seniority Board for Flight Radio Officers established under an agreement dated April 17, 1946 ; that the name of none of the plaintiffs appeared upon the initial seniority list for flight radio officers when issued by said Board ; and that the name of none has thereafter been added thereto ;

(e) That each of the plaintiffs received a check from the defendant on or about November 15, 1948, in the sum of \$2,000.

### 3. Plaintiffs' Exhibits.

That the genuineness and due execution, but not the materiality or legal effect, of the following exhibits offered by the plaintiffs has been admitted by the defendant :

(a) Memorandum dated January 21, 1941, over signatures of G. W. Angus and J. C. Leslie ;

(b) Memorandum dated April 22, 1943, over signatures of J. H. Tilton and H. O. Gentry.

### 4. Defendant's Exhibits.

That the genuineness and due execution, but not the materiality or legal effect, of the following ex-



hibits offered by the defendant has been admitted by the plaintiffs:

(a) Agreement dated January 4, 1945, between the defendant and Pan American Airways Navigators' Association;

(b) Memorandum dated December 20, 1944, captioned "Training and Placement Program for Navigators";

(c) Agreement dated December 31, 1946, between defendant and Transport Workers Union of America, C.I.O.;

(d) Agreement dated October 28, 1946, between defendant and Flight Radio Officers Association (including agreement dated April 16, 1946, appended thereto).

(e) Agreement dated February 6, 1948, between defendant and Transport Workers Union of America, C.I.O. (including agreement dated January 12, 1948, and memorandum dated February 6, 1948, appended thereto).

(f) Memorandum dated April 2, 1949, in settlement of differences in Docket Case A-3102 of the National Mediation Board (including memorandum of agreement dated April 2, 1949, appended thereto).

(g) Award dated November 10, 1948, in the matter of an arbitration between the defendant and the Transport Workers Union of America, C.I.O.;

(h) Letters dated March 4, 1949, from defendant to each of plaintiffs;

(i) Letter dated March 14, 1949, from Norman Leonard, Esq., to defendant;

(j) Letter dated March 18, 1949, from Leigh Athearn, Esq., to Messrs. Gladstein, Andersen, Resner & Sawyer.

Done in Open Court this 7th day of November, 1949.

/s/ GEORGE B. HARRIS,  
District Judge.

We hereby consent to the making of the above order.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,  
Attys. for Plaintiffs.

ATHEARN, CHANDLER  
& FARNUM,

HOFFMAN & ANGELL,  
/s/ THEODORE P. LAMBROC.

[Endorsed]: Filed November 7, 1949.

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[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial on April 27 and 28, and May 3, 1950, before the court sitting without a jury, a jury having been expressly waived, Gladstein, Andersen, Resner & Sawyer and Norman Leonard appearing as counsel

for plaintiffs, and Athearn, Chandler, Hoffman & Angell, Fred G. Athearn, Leigh Athearn, Hugh Knowlton, Jr., and Charles F. Hamlin appearing as counsel for defendant Pan American World Airways, Inc. (sued herein as Pan American Airways, Inc.), and the court having heard testimony and having examined the proofs offered by the respective parties, and the cause having been submitted to the court for decision, and the court being fully advised in the premises now makes its findings of fact as follows:

### Findings of Fact

Upon the complaint of the plaintiff Aubrey L. Charman the court finds:

#### Findings on Complaint of Plaintiff Charman

1. That the defendants sued as First Doe, Second Doe, and Third Doe, a corporation, do not exist and are not parties to this action.

2. That on January 3, 1950, the name of the defendant Pan American Airways, Inc., was changed to Pan American World Airways, Inc., and that said corporation (hereinafter referred to as the defendant) is organized and exists under and by virtue of the laws of the State of New York.

3. That it is true that plaintiff Charman was first employed by the defendant on October 7, 1935, as an Assistant Radio Operator at a salary of \$125.00 per month; that said plaintiff thereafter continued in the employ of defendant in various

capacities in the defendant's Communications Department and received various increases in salary from time to time until by December of 1940 said plaintiff was earning approximately \$200.00 per month as a Flight Radio Officer; that the balance of the allegations in Paragraph III of the complaint of said plaintiff are not true; and that it is true that incident to said plaintiff's employment during the years from 1935 to and including 1940, said plaintiff had no legally binding seniority privileges or similar rights, or the right to severance pay of any kind.

4. That the allegations of paragraph IV of the complaint of said plaintiff are not true; and that it is true that in the year 1940 and for several years prior thereto defendant was engaged and now is engaged in the business of rendering international air transport service; that until the latter part of 1940 it was the custom and practice of defendant to employ, as pilots of the aircraft engaged in said service, persons who were not only skilled and qualified to pilot such aircraft, but also trained and qualified in the art of navigation; that in the latter part of 1940, due to increased wartime demands upon the service rendered by defendant, including demands of the armed services, it became necessary for defendant to employ greatly expanded numbers of pilots to operate the aircraft engaged in such service; that it was not then possible to obtain in sufficient numbers pilot personnel who were also trained as navigators; that it was therefore neces-

sary for defendant to supplement the said flight crews by employing and adding thereto a member of the crew designated as a non-pilot navigator (sometimes designated as a professional navigator), who undertook navigational duties aboard said aircraft; that defendant hired qualified persons to take jobs as non-pilot navigators, and further initiated a program to train as non-pilot navigators persons then employed by defendant who were qualified to receive such training and who wished to become non-pilot navigators in order to receive increased pay.

5. That the allegations of paragraph V of the complaint of said plaintiff are not true, save and except that it is true that on or about the date therein alleged said plaintiff having received training as a non-pilot navigator, applied for transfer to duty as a non-pilot navigator, and that said request was granted by defendant.

6. That it is true that on the 21st day of January, 1941, at San Francisco, California, the defendant executed a written memorandum to said plaintiff in which the defendant stated as follows:

“This assignment may or may not be of a temporary nature, however, in the event that it is of a temporary nature and it is found no longer necessary to assign you as Navigator, you will resume your duties as Flight Radio Officer with no loss of seniority or other advantages which you now have,”



and the court finds further that said memorandum dated January 21, 1941, did not constitute an agreement or undertaking by defendant, and that said memorandum was intended as, and would reasonably have been understood as, merely the statement of future plan or intention on the part of defendant, and was actually so understood by the parties, and was not intended, would not reasonably be understood, and actually was not understood, to be an agreement or promise by defendant of a binding legal nature.

7. That it is true that said plaintiff entered upon his duties as a non-pilot navigator under the direction and control of the defendant, and on or about October 16, 1942, said plaintiff was transferred from the defendant's Communications Department to the defendant's Operations Department as a non-pilot navigator and thereupon entered upon his duties as a non-pilot navigator in said Operations Department.

8. That it is true that on the 22nd day of April, 1943, at San Francisco, California, the defendant executed another written memorandum to said plaintiff, in which the defendant stated as follows:



“Pan American Airways System

Memorandum

April 22, 1943

Division Operations Manager

Communication Supt., Acting

Transpacific

Treasure Island

“Operations

“Treasure Island

“This refers to a joint letter written by the Division Operations Manager and Division Communications Superintendent of the Transpacific Division to Communications personnel who were qualifying as Navigators.

“That letter stated, among other things, that upon checking out as a Navigator you would receive \$25.00 for navigation duties, in addition to your base pay and flight allowance, in accordance with the Communications pay scale. That letter also stated that you would be eligible for increases in base salary in line with the policy of the Communication Department.

“At that time it was not known whether this would be a permanent or temporary assignment and you were informed by that letter that if it were no longer necessary to assign you as a Navigator, you would assume your duties as a Flight Radio Officer without loss of seniority or advantages which you had at that time.

“On October 16, 1942, you were transferred to the Operations Department and your salary ad-

justed so that it would be equivalent to your base pay and flight allowance on the Communications Department scale, plus the \$25.00 for navigation duties.

“The purpose of this letter is to confirm our verbal understanding when the transfer was made, that you would henceforth be on the Navigators’ pay scale, rather than the pay scale of the Communication Department.

“After the war, if the position of Non-pilot Navigator should be abolished, we will reestablish you in the Communication Department in a grade commensurate with your length of service with the company after permitting you a period to qualify professionally with equipment and procedure current at that time.

“/s/ J. H. TILTON

J. H. Tilton

/s/ H. O. GENTRY

H. O. Gentry

“CC: Division Manager”

and the court further finds that said memorandum dated April 22, 1943, did not constitute an agreement or undertaking by defendant, and that said memorandum was intended as, and would reasonably have been understood as, merely the statement of future plan or intention on the part of defendant, and was actually so understood by the parties, and was not intended, and would not reasonably be understood and actually was not understood, to be an

agreement or promise by defendant of a binding legal nature.

9. That it is true that thereafter and until the 15th day of November, 1948, said plaintiff performed his duties as a non-pilot navigator for the defendant in its Operations Department and from time to time received various increases in pay so that at one time he was earning as much as \$625.00 per month; and that his rate of pay on said 15th day of November, 1948, was \$600.00 per month.

10. That it is true that on November 15, 1948, the defendant terminated said plaintiff's employment as a non-pilot navigator in the defendant's Operations Department.

11. That it is true that on the 4th day of December, 1948, said plaintiff requested in writing that defendant reinstate him in its Communication Department in a grade commensurate with his length of service with the defendant.

12. That the allegations of paragraph XII of the complaint of said plaintiff are not true, save and except that it is true that defendant did not and has not reemployed said plaintiff.

13. That the allegations of paragraph XIII of the complaint of said plaintiff are not true, save and except that it is true that the services of said plaintiff were of a satisfactory nature and character.

14. That the allegations of paragraph XIV of the complaint of said plaintiff are not true; and

that the said plaintiff has not shown that he suffered any damages by way of lost wages by reason of his not being reemployed by the defendant, irrespective of whether the defendant did or did not agree to reemploy him.

15. That the allegations of paragraph XV of the complaint of said plaintiff are not true; and that said plaintiff has not shown that he suffered any damages by way of loss of seniority privileges, severance pay privileges, and other privileges, by reason of his not being reemployed by the defendant, irrespective of whether the defendant did or did not agree to reemploy him.

#### Findings on Complaint of Plaintiff Cummings

Upon the complaint of the plaintiff Stanley Cummings the court finds:

1. As its findings on paragraph I of the complaint of plaintiff Stanley Cummings, the court makes findings identical to paragraphs 1, 2, 4, 6, 7, 8, 9, 10, 13 and 15 of its findings on the complaint of plaintiff Aubrey L. Charman.

2. As its findings on paragraph II of the complaint of said plaintiff, the court makes findings identical to paragraph 3 of its findings on the complaint of plaintiff Aubrey L. Charman.

3. As its findings on paragraph III of the complaint of said plaintiff, the court makes findings identical to paragraph 5 of its findings on the complaint of plaintiff Aubrey L. Charman.

4. As its findings on paragraph IV of the complaint of said plaintiff, the court makes findings identical to paragraph 11 of its findings on the complaint of plaintiff Aubrey L. Charman.

5. As its findings on paragraph V of the complaint of said plaintiff, the court makes findings identical to paragraph 12 of its findings on the complaint of plaintiff Aubrey L. Charman.

6. As its findings on paragraph VI of the complaint of said plaintiff, the court makes findings identical to paragraph 14 of its findings on the complaint of plaintiff Aubrey L. Charman.

#### Findings on Complaint of Plaintiff Hrutky

Upon the complaint of the plaintiff John A. Hrutky, the court finds:

1. The court incorporates by reference its findings on the complaint of plaintiff Stanley Cummings as and for its findings on each paragraph bearing the similar number in the complaint of plaintiff John A. Hrutky.

#### Findings on Complaint of Plaintiff Schwella

Upon the complaint of the plaintiff John F. Schwella, the court finds:

1. The court incorporates by reference its findings of the complaint of plaintiff Stanley Cummings as and for its findings on each paragraph bearing the similar number in the complaint of plaintiff John F. Schwella.



## Findings on First Separate Answer

Upon the first separate answer of defendant the court finds:

1. The court incorporates by reference paragraphs 4 and 5 of its findings on the complaint of Aubrey L. Charman.

2. That it is true that on the 27th day of October, 1944, each of the plaintiffs executed and delivered to the Pan American Airways Navigators' Association, an unincorporated association, an authorization form reading as follows:

"I hereby agree that the Board of Directors of Pan American Airways Navigators Association shall represent me in the negotiation of a contract with Pan American Airways concerning wages and working conditions.

"I further agree that the said Board of Directors, or any agent or agents appointed by the Board, shall have full authority to come to any agreement which they consider just and reasonable."

3. That it is true that on the 20th day of December, 1944, the defendant issued a memorandum to all persons then employed by defendant as navigators stating that, when the defendant resumed its policy to use navigators who also were pilots, the defendant would exercise its best efforts to place navigators who were not also pilots in other available positions, in the defendant's employ, for which they were qualified; and that said memorandum



further advised such navigators of the method and procedure by which they might apply for such other positions.

4. That it is true that on the 4th day of January, 1945, the said Pan American Airways Navigators' Association, on behalf of the plaintiffs (and certain other persons then in defendant's employ) executed an agreement with defendant (in which said agreement the defendant was referred to as "the Company") governing the wages, hours and working conditions, including seniority and reinstatement rights of the plaintiffs (and such other persons); that said agreement provided in paragraph (c) of section 3 thereof as follows:

"In addition, the Company will exercise its best efforts to place Navigators in available positions for which they are qualified when the policy of using Pilot-Navigators is resumed. The method by which the Company will endeavor to make such assignments available to Navigators and the procedure for giving additional training to Navigators who have been selected will be that described in the memorandum on this subject dated December 20, 1944."

5. That it is true that it was the effect and purpose of said agreement dated the 4th day of January, 1945, and it was so understood by the parties, and reasonably would be so understood, that the same replaced, superseded, and was a novation of any and all agreements or understandings pre-

viously existing, if any such existed, between the defendant and the employees who were parties thereto and the beneficiaries thereof (including the plaintiffs and each of them) affecting wages, hours and working conditions, including seniority and reinstatement rights; that the rights of plaintiffs, if any they had, under the memoranda dated the 21st day of January, 1941, and the 22nd day of April, 1943, referred to in their complaint, were replaced, superseded and subject to a novation by said agreement dated the 4th day of January, 1945; that thereafter the plaintiffs had no right to seniority or reinstatement save and except as provided in said agreement dated the 4th day of January, 1945; that the plaintiffs and each of them accepted the benefits of said agreement dated the 4th day of January, 1945, and ratified and confirmed the making of said agreement on their behalf.

6. That it is true that said Pan American Airways Navigators' Association thereafter became affiliated with and became a part of the Transport Workers Union of America (CIO); that the plaintiffs and each of them continued to designate and authorize said Transport Workers Union of America (CIO) to represent the plaintiffs and each of them for purposes of negotiating and signing, on behalf of plaintiffs and others, agreements with the defendant governing the wages, hours and working conditions, including seniority and reinstatement rights; that on the 31st day of December, 1946, an agreement was signed between the defendant and

the said Transport Workers Union of America (CIO), representing the plaintiffs and others, which replaced, superseded and was a novation of said agreement dated the 4th day of January, 1945.

### Findings on Second Separate Answer

Upon the second separate answer of the defendant the court finds:

1. That it is true that at all times mentioned in the complaint the defendant has been, and now is, engaged in business as a common carrier by air in interstate and foreign commerce, and further as a carrier by air transporting mail for and under contract with the United States Government; and that the defendant therefore during said period continuously has been and now is subject to the terms and provisions of the act of Congress known as the Railway Labor Act (45 U. S. Code §§151 to 163, and 181 to 188).

2. That it is true that shortly before the 17th day of April, 1946, the Flight Radio Officers Association, an unincorporated association, furnished evidence to the defendant, in conformity with the provisions of the Railway Labor Act, that the Flight Radio Officers Association had been duly designated as the representative of the flight radio officers and the flight radio officer trainees employed by the defendant and, on their behalf, to negotiate and conclude an employment agreement with the defendant covering hours of work, wages and other working conditions.

3. That it is true that on the 17th day of April, 1946, the defendant and said Flight Radio Officers Association entered into an agreement designated "Agreement for the Establishment of a System Seniority Board for Flight Radio Officers;" that said agreement provided, in part, as follows:

"(b) For the purpose of compiling an initial Seniority List on a System-wide basis for Flight Radio Officers in the employ of Pan American Airways, Inc., a Seniority Board is hereby appointed, consisting of four members, two of whom are to be appointed by the Company and two by the Flight Radio Officers Association.

"(c) The Seniority Board so named shall as soon as possible compile separate lists of Active and Inactive Flight Radio Officers who are or have been employed by the Pan American Airways, Inc., in the order of their seniority.

"(d) The Inactive list shall include former Flight Radio Officers who are now in other positions within the Communications Department and those who have been released due to reduction in force.

"(e) The Seniority Board in the establishment of a Seniority List shall adhere to the seniority provisions in this Agreement, provided that where records are not conclusive or are missing, the Seniority Board may use whatever

means it deems necessary to supplement such records.

“(f) The Seniority Board shall convene within sixty (60) days after the signing of this Agreement and compile a Seniority List on which shall appear the names of employees Active or Inactive, entitled to seniority. The completed Seniority List shall be posted on all bulletin boards where Flight Radio Officers are based.

“(g) An employee shall be privileged to protect his position on the Seniority List provided that such protest is in writing outlining the reasons therefor and is made to the Seniority Board within sixty (60) days after the Seniority List is posted, and provided further that such protests do not conflict with any provisions of this Agreement.

“(h) Within sixty (60) days after the time period to file protest with the Board has ended the Seniority Board will convene, if necessary, and shall make all determinations of questions contained in seniority protests.

“(i) The determination of the Board relating to Seniority protests shall be final and binding on the employee and the Company.”

4. That it is true that after the execution of said agreement dated the 17th day of April, 1946, the defendant proposed to the System Seniority Board, therein established, names of the employees affected and data for the determination of the senior-



ity rank or status of each; and that included upon the list so proposed by defendant were the names of each of the plaintiffs.

5. That it is true that on the 26th day of June, 1946, the defendant and said Flight Radio Officers Association found that they were unable to agree upon the terms of a collective bargaining agreement then being negotiated between them; that upon said date they applied to the National Mediation Board for mediation services, as provided in said Railway Labor Act; that said National Mediation Board accepted said matter as N.M.B. case number A2381, and proceeded to act as provided in said Railway Labor Act; that on or about October 28, 1946, in the presence of a representative of said National Mediation Board, said parties reached an agreement; and that on or about the 4th day of November, 1946, said matter was ordered closed and terminated by said National Mediation Board.

6. That it is true that said agreement dated the 28th day of October, 1946, between the defendant and the Flight Radio Officers Association, as mediated by and executed in the presence of said National Mediation Board, governed the hours of work, wages and other working conditions of flight radio officers and flight radio officer trainees in the defendant's employ; that as respects seniority said agreement confirmed and adopted said agreement dated the 17th day of April, 1946; and that within thirty (30) days after the execution of said agreement dated the 28th day of October, 1946, the de-



fendant filed the same with the National Mediation Board, as required by said Railway Labor Act.

7. That it is true that on the 19th day of November, 1946, the said System Seniority Board issued the initial seniority list for flight radio officers in the employ of defendant; and that the names of none of the plaintiffs appeared thereon.

8. That it is true that said Flight Radio Officers Association thereafter affiliated with and became a part of the Transport Workers Union of America (CIO), which thereafter furnished evidence that it continued to be duly designated as the representative of the flight radio officers and flight radio officer trainees employed by the defendant; that on the 6th day of February, 1948, the defendant and the said Transport Workers Union of America (CIO) entered into an agreement, superseding the said agreement dated the 28th day of October, 1946, governing the hours of work, wages and other working conditions of flight radio officers and flight radio officer trainees in the employ of defendant.

9. That it is true that said agreement dated the 6th day of February, 1948, provided in Article 9 thereof as follows:

“(a) Seniority hereunder shall be determined by the Flight Radio Officers’ System Seniority List of Pan American Airways, Inc., dated April 11, 1947, and as hereafter adjusted in accordance with the provisions of this Agreement.

“(b) A Seniority Board consisting of two members designated by the Union and two members designated by the Company shall meet twice each year for the purpose of adding and removing names, to act upon protests and to make such adjustments in the Flight Radio Officer System Seniority List as may be necessary and proper under this Agreement.

“(c) A new Flight Radio Officer hereunder shall accrue seniority from the date of departure on a productive flight; that is, a flight on which he is assigned not solely for his own training. When two or more employees depart on their first productive flight on the same date, their relative seniority standing shall be determined by lottery.

“(d) When the Seniority Board has completed the adjusted Flight Radio Officer System Seniority List, it shall cause to be posted copies of the List of all Fields where employees hereunder are based, and employees shall have the right to protest inaccuracies or omissions within sixty (60) days from the date of posting. A protest, other than typographical error, shall not be valid if the above Seniority Board has once acted on it.”

10. That it is true that within thirty (30) days after the execution of said agreement dated the 6th day of February, 1948, the defendant filed the same with the National Mediation Board, as required by law.

11. That it is true that the name of none of the

plaintiffs appears upon the said Flight Radio Officers' System Seniority List; that the said System Seniority Board caused said list to be posted as required by said agreements herein above set forth; that none of the plaintiffs protested or attempted to protest the omission of his name therefrom, either as required by said agreements or otherwise.

12. That it is true that the defendant is prevented by law, to wit, by said agreement dated the 6th day of February, 1948, as executed in the presence of and duly filed with the National Mediation Board, from employing any of the plaintiffs as a flight radio officer.

13. That it is true that even if each of the plaintiffs had been placed upon said System Seniority List, under an interpretation of said agreements and said list most favorable to said plaintiffs, none of the plaintiffs would have sufficient accrued seniority thereunder to have made him eligible for reinstatement to a position as flight radio officer in the defendant's employ on November 15, 1948, or at any time thereafter, since there are men with greater accrued seniority than any plaintiff might have who have been and are on "laid-off status," that is, seeking reinstatement with the defendant as flight radio officers but unable to obtain the same because of lack of available positions.

14. That it is true that said agreement dated the 6th day of February, 1948, provided that the same should continue in full force and effect until the 1st day of April, 1949; that shortly prior to the 1st day

of April, 1949, the parties thereto, being unable to agree upon an extension of said agreement, filed an application for mediation with the National Mediation Board, under the provisions of said Railway Labor Act, the said proceeding being designated as Docket Case A-3102; that on the 2nd day of April, 1949, in the presence of a mediator of said National Mediation Board, and under the seal of said board, a memorandum of agreement was signed and accepted by said parties continuing in effect the terms hereinabove mentioned of said agreement dated the 6th day of February, 1948, governing the employment of flight radio officers by said defendant; and that said memorandum of agreement dated the 2d day of April, 1949, further provided that such flight radio officers whose employment with the defendant thereafter was severed, by other than discharge or resignation should be conclusively presumed to have been severed due to the advent of radiotelephone, as a method of communication to and from aircraft operated by the said defendant, and that such employees so severed should receive from the defendant a severance allowance of \$3,000 at the rate of \$600 per month, or if they accept other employment with the defendant, a severance allowance of \$3,000 less \$600 for each year of such other employment.

### Findings on Third Separate Answer

Upon the third separate answer of defendant, the court finds:

1. That it is true that the defendant has offered

to each of the plaintiffs employment in the communications department of defendant at a grade commensurate with the length of service of each said plaintiff; and that each said plaintiff refused and declined to accept said offers when made.

### Findings of Fourth Separate Answer

Upon the fourth separate answer of defendant the court finds:

1. The court incorporates by reference paragraphs 2, 4, 5 and 6 of its findings on the first separate answer above set forth.

2. That it is true that on the 14th day of July, 1948, said Transport Workers Union of America (CIO,) acting for and on behalf of the plaintiffs and others, entered into an agreement with the defendant, which said agreement submitted to a board of arbitration for decision the question of what rights of seniority or right of retention of employment, if any, the plaintiffs and others might have as against the defendant.

3. That it is true that on the 10th day of November, 1948, said board of arbitration rendered its award, which stated in paragraph 1 as follows:

“1. It is the decision and award of this Board of Arbitration that Pan American Airways, Inc., shall not be required to retain the professional navigators in its employ, except for work in accordance with the established practice as ground instructors in navigation.



At the discretion of the Company they may be used as navigation instructors in flight.”

That it is true that said award provided further in paragraphs 3, 4 and 5 thereof as follows:

“3. Upon dismissal each of the professional navigators employed by the Company will be given as severance pay the sum of \$2,000 which will include the amount that would be payable under Article 18(f) of the parties’ agreement of December 31, 1946; they will also receive payment for vacation earned or accrued but not taken and refunds due under the Company insurance and retirement plans.

“4. Provisions of the agreement of the parties on seniority and related matters inconsistent with this award are deemed superseded or amended accordingly.

“5. The provisions of this award shall become effective as of the close of business on November 15, 1948.”

4. That it is true that on the 15th day of November, 1949, the services of each of the plaintiffs were terminated by the defendant, and that each of said plaintiffs was then paid by defendant the sum of \$2,000 as severance pay, plus payment for vacation earned or accrued but not taken and refunds due under the defendant’s insurance and retirement plans.

From the foregoing facts, the court concludes:

Conclusions of Law

1. That defendant Pan American World Airways, Inc., is entitled to judgment against the plaintiffs, and each of them.

2. That each of the parties shall bear its own costs.

Let judgment be entered accordingly.

Dated this 16th day of May, 1950.

/s/ MICHAEL J. ROCHE,  
District Judge.

Receipt of Copy Acknowledged.

Lodged May 11, 1950.

[Endorsed]: Filed May 18, 1950.

In the District Court of the United States for the  
Northern District of California, Southern Division

No. 28639H

AUBREY L. CHARMAN, STANLEY CUM-  
MINGS, JOHN A. HRUTKY and JOHN F.  
SCHWELLA,

Plaintiffs,

vs.

PAN AMERICAN AIRWAYS, INC., a corpora-  
tion, FIRST DOE, SECOND DOE and  
THIRD DOE, a corporation,

Defendants.

### JUDGMENT

The above-entitled cause came on regularly for trial on April 27 and 28 and May 3, 1950, before the court sitting without a jury, a jury having been expressly waived, Gladstein, Andersen, Resner & Sawyer and Norman Leonard appearing as counsel for plaintiffs, and Athearn, Chandler, Hoffman & Angell, Fred G. Athearn, Leigh Athearn, Hugh Knowlton, Jr., and Charles F. Hamlin appearing as counsel for defendant Pan American World Airways, Inc., (sued herein as Pan American Airways, Inc.), and the court having heard the testimony and having examined the proofs offered by the respective parties, and the court being fully advised in the premises and having filed herein its findings of fact and conclusions of law, and having directed that judgment be entered in accordance therewith; now,

therefore, by reason of the law and findings aforesaid:

It Is Hereby Ordered, Adjudged and Decreed:

1. That defendant Pan American World Airways, Inc., is hereby given judgment against the plaintiffs, and each of them.

2. That each of the parties shall bear its own costs.

Dated this 16th day of May, 1950.

/s/ MICHAEL J. ROCHE,  
District Judge.

Entered in Civil Docket May 19, 1950.

Lodged May 11, 1950.

[Endorsed]: Filed May 18, 1950.

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[Title of District Court and Cause,]

### NOTICE OF APPEAL

To the Clerk of the Above-Entitled Court:

Please take notice that the plaintiffs and each of them appeal to the United States Court of Appeals for the Ninth Circuit from the judgment entered herein on May 19, 1950, and from the whole of said judgment.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,

By /s/ NORMAN LEONARD,  
Attorneys for Plaintiffs.

Receipt of Copy Acknowledged.

[Endorsed]: Filed May 22, 1950.

In the Southern Division of the United States District Court for the Northern District of California

No. 28639

Before: Hon. Michael J. Roche,  
Judge.

AUBREY L. CHARMAN, STANLEY CUM-  
MINGS, JOHN A. HRUTKY and JOHN F.  
SCHWELLA,

Plaintiffs,

vs.

PAN AMERICAN AIRWAYS, INC., a corpora-  
tion, FIRST DOE, SECOND DOE and  
THIRD DOE, a corporation,

Defendants.

## REPORTER'S TRANSCRIPT

Thursday, April 27, 1950

### Appearances:

For the Plaintiffs,

NORMAN LEONARD, ESQ.

For the Defendants,

LEIGH ATHEARN, ESQ.,

F. G. ATHEARN, ESQ.,

HUGH KNOWLTON, ESQ.,

CHARLES HAMLIN, ESQ.



AUBREY L. CHARMAN

Plaintiff herein, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination

By Mr. Leonard: [2\*]

The Clerk: State your full name, please?

A. Aubrey Lanhour Charman.

The Court: Where do you reside?

A: I reside at Lodi, California.

The Court: And your business or occupation?

A. My business is operation of a launderette.

The Court: At the present time?

A. Yes, sir.

The Court: All right, proceed.

Q. (By Mr. Leonard): What is your age, Mr. Charman? A. Forty.

Q. What formal education did you have, Mr. Charman?

A. My formal education was grammar school and specialized courses in radio and meteorology.

Q. Where did you go to grammar school?

A. Southern California.

Q. When did you enter into your first specialized course in radio? A. 1925.

Q. Where?

A. The National Radio School in Los Angeles.

Q. How long a course was that?

A. Two years.

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\* Page numbering appearing at top of page of original certified Reporter's Transcript.

(Testimony of Aubrey L. Charman.)

Q. Just state briefly what the nature of the course was and what you learned.

A. Radio: The theory, practice, operation of radio transmitters and receivers, and the operation and practical use on radio networks.

Q. At the conclusion of that two year course did you obtain employment or did you have any further studies?

A. I obtained employment and furthered my studies thereafter to increase the grade of license.

Q. What employment did you obtain?

A. Radio operator aboard ships at sea.

Q. At what companies did you work and on what ships did you work?

A. On a French ship at first, the *Compania Durdoleo*, a French company; then transferred to *Socony Vacuum*, *Sun Oil Company*, *Matson Navigation Company*, and finished my sea-going career as Chief Operator aboard the *Lurline*.

Q. All the employment you had on these various ships was in what capacity?

A. Radio operator. [4]

Q. Did you obtain any licenses, or what are commonly called tickets, as a radio operator?

A. When I first went to sea I had to have a second class telegrapher's license, that I obtained through an examination at the Federal Trade Commission.

Q. Did you thereafter obtain another license?

A. After studying and a year's time at sea I

(Testimony of Aubrey L. Charman.)

took an examination at the Federal Communications Commission for the first class license.

Q. What kind of study did you have reference to?

A. Further study of the radio. The first class license—first class radio examination is much stiffer than the second class.

Q. For how long did you work for the Matson Navigation Company? A. Three years.

Q. On what ships did you work?

A. Lurline and Monterey.

Q. In what capacity?

A. As second and chief radio man.

Q. And ended with, I think you said, ended your sea-going career as Chief Radio Operator? [5]

A. With Matson, yes.

Q. Aboard what ship? A. The Lurline.

Q. What was your next employment or education after you left the Lurline?

A. My next employment was with Pan-American Airways.

Q. When were you first employed by Pan-American Airways? A. October 8th, I believe, 1935.

Q. In what capacity were you so employed?

A. Assistant Radio Operator.

Q. In connection with that work was it necessary, or prior to the time you undertook that work, I should say, was it necessary for you to undertake any studies to prepare yourself for that duty?

A. For that specific duty?

Q. For that duty?

(Testimony of Aubrey L. Charman.)

A. Not for that duty, no.

Q. And approximately—Withdraw that. What were your duties as an Assistant Radio Operator?

A. The operation of the radio circuit, sending and receiving of messages; doing the ground control of the airplane—ground control of the radio circuit, whether it be airplane; [6] take radio bearings for the airplanes, primarily, while they are in flight—while they are at sea on the flight.

Q. Where were you stationed when you performed that duty?

A. Alameda, Honolulu, Wake Island and New Zealand.

Q. How long did you remain an Assistant Radio Operator?

A. I believe it was—when I went to Wake Island, that was in the latter part of 1936. I went to Wake Island as Chief Operator at Wake.

Q. Mr. Charman, I show you a carbon copy of a letter dated November 15, 1948, the original of which was apparently signed by Wyatt F. Fisher. I have shown this to counsel and he has no objection to your using it——[7]

\* \* \*

Q. (By Mr. Leonard): After your duty as Assistant Radio Operator which you have described, and refreshing your recollection from the memoranda prepared by the defendant which you have in your hand there, will you state what your next duty was and when you were assigned to it?

A. The next was Wake Island on, I believe, the

(Testimony of Aubrey L. Charman.)

latter part of 1936, as Chief Operator. Then I was returned to Honolulu as an Assistant Operator for a period of six months. I was on Wake Island six months. Then I was sent to New Zealand to establish a new radio station, to operate and maintain the present station that was there and to establish a new one preparatory to Pan-American Airway's new airline to New Zealand.

Q. And during that period of time what was your classification?

A. During that period of time my classification varied between Assistant Radio Operator and Chief Radio Operator.

Q. Let me see that for a moment. When did you become a Flight [8] Radio Officer?

A. The latter part of 1938.

Q. This personnel memorandum indicates you were classified Flight Radio Officer on October 1st, 1938. Would that be substantially correct?

A. I was going to say October when I decided not to. I wasn't sure.

Q. During the time you were a radio operator as distinguished from F.R.O., what salary or salaries were you receiving?

A. I started at \$125.00 and when I transferred it was \$200.00 a month.

Q. As Radio Operator or Assistant Radio Operator or Chief Radio Operator your duties were confined to nonflying duties, is that correct?

A. That is correct.



(Testimony of Aubrey L. Charman.)

Q. In October, 1938, you became a Flight Radio Officer?      A. That is right.

Q. Will you explain the duties of that position?

A. A Flight Radio Officer's job consists of operating and when possible maintaining the equipment aboard the aircraft, the sending and receiving of messages relative to the location of the airplane on the ocean or over the ocean; weather reports' radio bearings, and any other telegraphic messages necessary.

Q. In other words, as Flight Radio Officer you actually [9] performed the duties aboard the aircraft in flight?      A. That is true.

The Court: That began when? 1938?

A. October 1st, 1938.

Q. (By Mr. Leonard): What was your salary as Flight Radio Officer?

A. I think I started at \$250.00 a month.

Q. Did you receive any increases until your next transfer?

A. Yes, I received regular increases.

Q. Do you know what it was when you terminated as a Flight Radio Officer?

A. No, I don't know.

Q. You don't recall? All right. Now, thereafter, at sometime thereafter, you became what has been described as a Nonpilot Navigator, is that right?      A. Yes.

Q. According to Mr. Fisher's memorandum, January 1st, 1941, would that be the correct date?

A. Yes.

(Testimony of Aubrey L. Charman.)

Q. Will you state, Mr. Charman, the circumstances surrounding your transfer from a Flight Radio Officer to a Nonpilot Navigator?

A. Somewhat in detail?

Q. Yes. [10]

\* \* \*

A. Mr. Thurston Ramsey—I believe he was assistant to the General Manager of the Pacific Division in the latter part of 1940, December, 1940—approached me after He approached Mr. Angus, who was the Communications Superintendent for the Pacific Division. [11]

\* \* \*

Q. (By Mr. Leonard): Mr. Charman, you have already testified that on January 1st, 1940, you transferred from the Communications Department where you were Flight Radio Officer to the Navigation Department. Is that what it was called?

A. That is true.

Q. Shortly after your transfer did you receive a written [12] memorandum in connection with that transfer? A. I did.

Q. I show you a document dated January 21, 1941, which appears to be addressed to one of the other plaintiffs in this case, Mr. Hrutky, and ask you if you received a document identical in form to that one? A. I did.

Q. At the present time you have either misplaced or lost the one you received, is that correct?

A. Yes.

(Testimony of Aubrey L. Charman.)

Mr. Athearn: We will be happy to furnish you a copy of it, counsel.

Mr. Leonard: Well, if we can stipulate——

Mr. Athearn: They were all uniform.

Mr. Leonard: I should like to offer, if the court please, the document and ask permission to withdraw the original and substitute a photostatic copy therefor.

The Court: It may be.

Mr. Athearn: Now, Your Honor, at this time we will make objection to the offer on the basis it is our contention that this is only a statement of intention and not a written contract; that it is like my promising people anything—I [13] promise Mr. Leonard I will buy him a lunch; if I don't, he can't proceed and sue even though I wrote it in a letter. I think it were better if this were offered for identification and we argue later about admissibility.

The Court: Suppose it goes in subject to motion to strike and over the objection?

Mr. Athearn: All right. I think there will be other memoranda, and if we can have the same motion to strike with reference to them?

The Court: Very well.

(Thereupon, letter dated Jan. 21, 1941, addressed to Mr. J. A. Hrutky, signed by G. W. Angus and J. C. Leslie, was admitted into evidence as Plaintiff's Exhibit 1.)

Q. (By Mr. Leonard): For the record, so that it may be complete, I notice that this document

(Testimony of Aubrey L. Charman.)

which has just been admitted in evidence as Plaintiff's Exhibit 1, bears two signatures; that of G. W. Angus and J. C. Leslie. Will you tell us who G. W. Angus was in January, 1941?

A. He was the Communications Superintendent for the Pacific Division of the company.

Q. Will you state whether or not he was your superior [14] officer in the Communications Department?

A. Yes, sir.

Q. Who was J. C. Leslie?

A. J. C. Leslie, if my title is correct, was the general manager of the Pacific Division.

Q. What was his relationship to you in your capacity as an employee of the company?

A. Well, no different from any other General Manager's relationship would be with any employee.

Q. Will you state, Mr. Charman, what led up to your receipt of the communication which is Plaintiff's Exhibit 1 in evidence?

A. Well, Mr. Ramsey, Thurston Ramsey, who I said I believe was assistant to Mr. Leslie, approached me requesting I take on the duties of Navigator because they were running short on pilots and needed pilots for piloting rather than navigating. They chose me as being one of their senior men in the communications groups. We had taken navigation, a correspondence course in navigation put out by the company.

Q. When did you engage in that course?

A. I don't know except that I was a Flight Radio Officer at the time.

(Testimony of Aubrey L. Charman.)

Q. While you were a Flight Radio Officer you took a [15] correspondence course in navigation put out by the company? A. Yes, sir.

Q. Did you complete that course?

A. Yes, sir.

Q. All right, proceed.

A. Mr. Ramsey suggested I take on the job of Navigator, and if I would fulfill the requirements of the position they would then take some more radio men off the seniority list, top of the list, and make navigators of them. My first answer was, "Well, I don't know." In other words, "What's it worth to me?" His statement at the time was that if anything should ever go wrong with that work, they would go back to their Pilot-Navigators, we would then revert to our communications jobs; and I requested Mr. Ramsey to put it in writing, and he said, "I can't. Mr. Leslie will."

Mr. Angus, the Superintendent, then called me to the office and asked me what my answer was and I said, "On Mr. Ramsey's recommendation that Mr. Leslie will write a letter referring to the fact that I will come back to Communications I will accept the request that I take on Navigation duties."

Q. Thereafter you received the document?

A. That is true. [16]

Q. And you did assume duties as a Navigator, is that correct? A. Yes, sir.

Q. Will you state how long that course took?

A. That course took a period of approximately



(Testimony of Aubrey L. Charman.)

five months or six months, consisting of classroom time and actual time in the airplane navigating under a pilot-navigator as instructor.

Q. Where did you study? Where did this course of study take place? A. On Treasure Island.

Q. You were transferred from the Communications Department to Navigation, and was there any change in your salary?

A. Yes, I believe I got a \$25.00 increase in pay.

The Court: What was the pay at that time?

A. I believe it was \$275.00. I am not sure. I don't know.

Q. (By Mr. Leonard): After the—Strike that. Did the training period encompass any trips outside of the continental United States?

A. We made three flights to Hong Kong as a check-out. The way they performed our training, we had to undertake certain studies along certain lines of navigation. As an instance, the first one was dead reckoning and we made a trip to [17] Hong Kong and back solely on dead reckoning.

The Court: What do you mean by dead reckoning?

A. Dead reckoning is the assuming of your position on any part of the ocean by drift, the way the wind is blowing you, by ground speed and by air speed. In other words, there is no celestial navigation used at all.

After that trip we had further studies combining celestial and radio navigation, and then we had a

(Testimony of Aubrey L. Charman.)

trip using the combination of celestial and radio navigation, just using the sun and the moon in celestial navigation. On our third trip we had everything, and that was our check-out trip. If we got through that all right we were on our own.

Q. (By Mr. Leonard): When did you finally complete that course of study you have described and finally go out on your own?

A. I think it was June 21st, 1941.

Q. Thereafter, did you continue in the employ of the company as a Navigator? A. Yes, sir.

Q. And did you about two years later, or sometime in April, 1943, receive another communication from the company in connection with the matters we are concerned with here? A. Yes. [18]

Q. I show you this multigraphed document dated April 23, 1943—April 22nd, excuse me, 1943, and ask you if that is the document you received at or about that time? A. Yes, sir.

Q. For the record, I notice it is signed J. H. Tilton and H. O. Gentry. Will you state who they are?

A. Mr. Angus, the Chief of Communications, for the Pacific Coast, died in an airplane crash and Mr. Gentry replaced him; and Mr. Tilton replaced Mr. Leslie, the Operations Manager.

Q. In other words, the gentlemen who signed the documents in 1943 were successors of the gentlemen who signed the document in 1941? A. Yes.

(Testimony of Aubrey L. Charman.)

Mr. Leonard: We offer this in evidence, if Your Honor please, as plaintiffs' exhibit next in order.

The Court: It may be admitted and marked.

Mr. Athearn: Subject to the motion to strike previously made?

The Court: Subject to the motion to strike previously made and over the objection of counsel.

(Thereupon, Memorandum from Pan American Airways System dated April 22, 1943, was admitted in evidence as Plaintiffs' Exhibit 2.)

Q. (By Mr. Leonard): After the receipt of the communication that has been marked in evidence did you continue your duties as a Navigator for the company? A. Yes, sir.

Q. Did you from time to time receive any pay increases? A. Yes, sir.

Q. And what was the maximum salary that you earned in your position as Navigator?

A. The maximum salary I earned was \$600.00 a month.

The Court: What was it?

A. \$600.00.

Q. (By Mr. Leonard): Was it that or was it \$625.00?

A. There were three or four so-called "check navigators" chosen by the Chief Navigator and they, I believe, received an extra \$25.00 a month compensation.

Q. But you were not one of them?

(Testimony of Aubrey L. Charman.)

A. I wasn't one of them.

Q. Your employment as navigator terminated when, Mr. Charman?

A. November 15, 1948. 15th or 30th, I don't know which it was. I guess we got our telegram on the 15th.

Q. Of November? A. Yes. [20]

Q. Of 1948? A. Yes.

Q. Thereafter did you——

The Court: Just a moment. What occurred at that time?

A. The termination of my employment with Pan American.

Q. (By Mr. Leonard): Thereafter did you send any written communication to the company requesting that you be reinstated in the Communications Department? A. Yes, sir.

Mr. Leonard: Mr. Athearn, I wonder if you have the original of such communication?

Mr. Athearn: No, but I think I have a copy here, though.

Mr. Leonard: If you have it, I would appreciate it.

Mr. Athearn: I will get it during the noon hour.

Q. (By Mr. Leonard): You did send a written communication, a copy of which Mr. Athearn says he will produce, to the company in which you requested you be assigned to duty in the Communications Department? A. That is right.

(Testimony of Aubrey L. Charman.)

Q. Did you receive a response from the company?

A. I received a response.

Q. Did the response grant your request or did it deny that request? [21]

A. No, sir, it denied it.

Q. Have you since November, 1948, been employed by the company in its Communications Department?      A. No, sir.

Q. Have you been employed by the company at all?      A. No, sir.

Q. So that it is also true—I just ask this for the record—that since November, 1948, you have not resumed your duties as Flight Radio Officer with no loss of seniority?      A. No, sir.

Q. It is also true, and I ask this for the record, that since——

Mr. Athearn: Mr. Charman has already testified he wasn't working for the company, and we have stipulated to that.

Mr. Leonard: Well I would like to tie that in, if I may, to the documents which are in evidence.

The Court: Terminated employment in 1948? What month was it?

A. November.

Q. (By Mr. Leonard): It is also true you have not been re-established in the Communications Department in a grade commensurate with the length of time—— [22]

Mr. Athearn: This is argumentative. He has just stated he wasn't working for the company.



(Testimony of Aubrey L. Charman.)

The Court: Very well.

Q. (By Mr. Leonard): All right, what have you done, Mr. Charman, since November, 1948?

A. I tried the insurance business and found that extremely rugged, shall we say.

Q. Incidentally, do you have a family?

A. Yes, I have.

Q. What does it consist of?

A. Wife and two little girls.

Q. What earning or earnings have you had since November, 1948?

A. I think my Federal income tax for—on the income tax report for 1949 was around \$600.00.

Q. This is in the insurance business?

A. Yes.

Q. The agency which you tried to establish was at Lodi? A. Yes.

Q. Did you make any effort to get employment after November, 1948, with any other air lines?

A. Yes, sir. [23]

Q. With what airlines and with what success?

A. United Airlines and Northwest Airlines, with no success.

Q. Were any reasons given you as to why—Withdraw that. For what positions did you apply with United or Northwest?

A. Radio or Navigator.

Q. What reasons were given you?

A. Age limit. 33 was the age limit they would accept new men.

(Testimony of Aubrey L. Charman.)

Q. I think you testified you are now 40?

A. That is right.

Mr. Leonard: I believe that is all.

### Cross-Examination

By Mr. Athearn:

Q. I think you stated, Mr. Charman, that it was Thurston Ramsey who first approached you about becoming a Nonpilot Navigator?

A. That is true.

Q. He was one of your superiors at the time?

A. He was in the Operations Department. He wasn't my direct superior. My direct superior was in the Communications Department and he was responsible to the Operations Department.

Q. Can you tell us about when that was he approached you? [24]

A. Latter part of December, 1940.

Q. Latter part of December, in December, 1940?

A. Yes.

Q. And it was January 1st, 1941, that you became a Non-Pilot Navigator, was it not?

A. That is true.

Q. Then this approach by Mr. Ramsey would have been a week or two before that, is that correct?

A. I would say so, yes.

Q. Before that time had you had any discussion with anyone about becoming a Non-Pilot Navigator?

A. Not that I recall.

(Testimony of Aubrey L. Charman.)

Q. Did you request to become a non-Pilot Navigator prior to that time?

A. Not that I recall.

Q. Then this approach by Mr. Ramsey was the first time you had ever heard about the possibility of getting this job as a Non-Pilot Navigator, is that it? A. Honestly, so far as I know.

Q. I realize it has been a long time. I am not trying to force your memory. Ten years is a long time, but your best recollection is that in the latter part of December, 1940, [25] Mr. Ramsey approached you about this matter? A. Yes.

Q. And you don't recall having discussed the matter or had anything to do with such matter before that time? A. No, sir.

Q. Then as I understand it your conversation with Mr. Ramsey made you pause, but you wanted to talk to another gentleman. Was that Mr. Angus or Mr. Leslie?

A. No, no. I wanted—I discussed with Mr. Ramsey and negotiated with Mr. Ramsey provided Mr. Angus said all right. Mr. Angus was my direct superior at the time.

Q. Then you went to Mr. Angus' office, did you, I think you said? A. That is right.

Q. You still hadn't made up your mind to apply for this transfer at that time?

A. No. I had agreed with Mr. Ramsey provided Mr. Angus said all right it would be all right with me.

Q. In other words, if the head of your present

(Testimony of Aubrey L. Charman.)

department, the Communications Department would release you, you would take Mr. Ramsey's offer?

A. That is true, yes, sir. [26]

Q. And there would be that qualification, that something had to be in writing?

A. I wanted information, preferably in writing, as to what would happen should I lose my navigation job for any reason whatsoever.

Q. Of whom did you ask that information?

A. Mr. Ramsey.

Q. What did he say?

A. He said he would ask Mr. Leslie to write letters.

Q. I see. And the letter that you mentioned is the one in January of 1941, which is plaintiffs exhibit 1?

A. Yes, sir.

Q. I show you now a document captioned "Pan American Airways System," dated November 5, 1941, and bearing the name Aubrey L. Charman, and ask you if you recall that document?

Mr. Leonard: Is that an original?

Mr. Leigh Athearn: Yes, it is.

A. That is my writing.

Q. That is your signature?

A. But I don't recall it.

Q. It says, "November 5, 1941" and is addressed to the Communications Superintendent, is that correct?

A. Yes. That would be Mr. Angus, yes.

Q. It says, "In line with the proposed transferring of Flight Radio Officers to Navigators, please consider this letter [27] as my application for same.

(Testimony of Aubrey L. Charman.)

Signed, Aubrey L. Charman." That is your signature on there? A. That is true.

Q. With this to refresh your recollection, do you want to say anything more about previous dealings with this transfer? I realize memories are bad, Mr. Charman.

A. No, it doesn't refresh my memory any except that it went on back further than December, 1940.

Q. Isn't it a fact that you were anxious to get this transfer?

A. It meant \$25 more a month to me, yes.

Q. And you heard on the grapevine such a move was impending, did you not?

A. Apparently so, yes, sir.

Q. And you rushed right out and wrote a memorandum about it? In other words, you took the first step to initiate the transfer, didn't you?

A. I wouldn't say so, no. Mr. Angus, or Mr. Thurston Ramsey then approached me before December, if that is dated December 5th.

Q. I see. And you believe your conversations with Mr. Ramsey and Mr. Angus were prior to this memorandum?

A. That is right, and I had to write an official request for it.

Q. I see.

A. Mr. Ramsey came to the top floor of the communications, and [28] talked to me outside Mr. Angus' office. He had just come from Mr. Angus' office. Then I went right in to Mr. Angus.



(Testimony of Aubrey L. Charman.)

Q. At the time this November 5th document was executed, had you at that time said you would accept it only if certain reemployment rights were put in writing? A. I would judge so, yes.

Q. Are you sure of that now?

A. No, I am not.

Q. Then you requested this, put this application in, without any knowledge about reemployment rights?

A. Oh, boy, for a good memory. I don't think I would have without it. I had too much to lose.

The Court: What is that answer?

A. I don't think I would have put that request in without some reemployment rights. I had too much to lose.

Q. (By Mr. Athearn): You are only guessing what you might have done? You apparently have no memory about the matter?

A. That is right.

Mr. Athearn: We will ask that this be defendant's first exhibit.

The Court: Let it be admitted and marked.

(Memorandum dated November 5, 1940, Charman to Communications Superintendent, was received in evidence as Defendant's Exhibit A.)

Q. (By Mr. Athearn): After you were given this job as Non-Pilot [29] Navigator, and on or about October 27, 1944, did you join the Pan American Navigators Association? A. I did.

Mr. Leonard: Objected to, and move to strike

(Testimony of Aubrey L. Charman.)

on the ground it is incompetent, irrelevant and immaterial whether he joined any Association.

Mr. Athearn: Your Honor, we are going to show he not only joined the Association, but he authorized it to enter into a contract on his behalf. It is relative to one of our separate defenses.

Mr. Leonard: I submit it isn't material at all whether he joined an association of navigators to execute some collective bargainings.

The Court: Objection overruled. It may or may not be material. I will give him a record on it.

Mr. Leonard: May it be subject to a motion to strike?

The Court: Yes.

Mr. Leonard: Thank you.

Q. (By Mr. Athearn): Did you join the Association? A. I did.

Q. What kind of an organization was that?

A. It was an organization of navigators for the promotion of rights of the navigators.

Mr. Leonard: May it be understood, without constant interruption, that the motion goes to the entire line of testimony? [30]

The Court: It may so show.

Q. (By Mr. Athearn): The Association later affiliated with the Transport Workers Union, C.I.O.?

A. True.

Q. Did you continue to be a member after it changed its affiliation? A. I did.

Q. On or about October 27, 1944, did you execute and deliver to the Pan American Airways

(Testimony of Aubrey L. Charman.)

Navigators Association an authorization card reading as follows:

“I hereby agree that the Board of Directors of Pan American Airways Navigators Association shall represent me in the negotiation of a contract with Pan American Airways concerning wages and working conditions. I further agree that the said Board of Directors or any agent or agents appointed by the Board shall have full authority to come to any agreement which they consider just and reasonable.”

Mr. Leonard: If the Court please, in addition to the objection heretofore made I have the further objection to that general question on the ground that the provision of the Railway Labor Act, to which counsel makes reference in connection with the other defense, protects the secrets of trade union membership; and that counsel in this case and no other case has a right to inquire into the internal operations of the union and the kind of authorization men give the union, aside from the [31] fact that it is totally immaterial to this cause of action. It is a violation of the law, the Railway Labor Act, for counsel to inquire into that.

Mr. Athearn: I submit it would be a violation of the Railway Labor Act for us to deal with this organization unless a majority of the membership had executed it.

The Court: Objection overruled.

Q. (By Mr. Athearn): Did you sign such an authorization card?

(Testimony of Aubrey L. Charman.)

A. As a navigator, yes.

Q. And delivered it to the Association?

A. Yes. True.

Q. Were you aware that on or about January 4, 1945, the Pan American Airways Navigators Association, on behalf of yourself and others, executed an agreement with the defendant covering wages, hours, working conditions, seniority and reinstatement rights? A. True.

Q. Did you ever repudiate that agreement?

Mr. Leonard: That is objected to, Your Honor, on the ground it is immaterial.

The Court: Objection overruled. You may answer.

A. No.

Q. (By Mr. Athearn): You never told anyone you didn't want that agreement to be made for you?

A. No. As a navigator? No. [32]

Q. Did you ever file a protest with the Flight Radio Officers Seniority Board regarding the omission of your name from the Flight Radio Officers in the seniority list which was issued November 16, 1946?

A. I was—no, I was never informed my name was omitted from the list.

Q. Did you file a protest about it?

A. No.

Q. In your complaint you have alleged you have lost wages in the sum of \$150,000 on account of the defendant's failure to reemploy you. Can you tell me how that amount was calculated?

(Testimony of Aubrey L. Charman.)

Mr. Leonard: Objected to, if Your Honor please, as a misstatement of the complaint. He didn't allege he lost wages in the sum of \$150,000. He alleges he was damaged in that sum by reason of the breach of contract.

Mr. Athearn: Let's read the complaint, counsel. Reading from paragraph XIV of your complaint at the bottom of page 5:

"That by reason of defendants' breach of the agreements as aforesaid, said plaintiff has suffered damages in the amount of \$150,000 in lost wages."

Mr. Athearn: You are aware that is in the allegations of your complaint?           A. True.

Q. Well, can you tell me how the \$150,000 in lost wages was calculated? [33]

A. Calculated on my earnings, my approximate earnings in the company until the time of retirement age.

Q. That is assuming that is the total amount you would earn if you worked for the Pan American Airways until your retirement?

A. In round figures.

Q. And you believe you are entitled to that sum of money without doing any work?

Mr. Leonard: Just a minute. That is objected to, if Your Honor please. What he believes is immaterial. We have a legal question whether there is a breach of contract and what the damages are.

The Court: Well, I will try to apply the law to the facts as we develop them. What are the facts?



(Testimony of Aubrey L. Charman.)

Objection overruled. Read the question, Mr. Reporter, please.

(Question read by the reporter.)

A. Yes, sir.

Q. (By Mr. Athearn): In your complaint you have alleged that you would have severance privileges had you been reemployed, having a value of \$10,000. How did you arrive at that figure?

A. Please read that again.

The Court: Read the question, Mr. Reporter, please.

(Question read by the reporter.)

A. I do not recall. [34]

\* \* \*

Mr. Athearn: Mr. Leonard, in the pre-trial order covers a series of exhibits to be offered by the defendant, and the order provided the genuineness and due execution but not materiality or legal effect of these would be admitted, and I wonder if you would mind if we put them all in in series, for identification, and let them be given numbers so I can ask about them from this witness?

Mr. Leonard: No, there is no objection. At the time they are offered in evidence, Your Honor, we will have certain legal objections to present.

Mr. Athearn: Then we will offer as defendants next in order an agreement dated January 4, 1945, between the defendant and the Pan American Navi-

(Testimony of Aubrey L. Charman.)

gators Association.

The Court: It may be admitted and marked.

(Agreement dated January 4, 1945, between the defendant and the Pan American Navigators Association was marked Defendants Exhibit B for identification.)

Mr. Athearn: We offer as our next exhibit, for identification, a memorandum dated December 20, 1944, captioned, "Training and Placement Program for Navigators." [35]

The Court: It may be admitted and marked.

(Thereupon the document above referred to dated December 20, 1944, was marked Defendants Exhibit C for identification.)

Mr. Ahearn: We offer next an agreement dated December 31, 1946, between the defendant and the Transport Workers Union of America, C.I.O.

Mr. Leonard: Which group is that for? Oh, navigators.

The Court: It may be admitted and marked next in order.

(Whereupon the agreement above referred to was marked Defendants Exhibit D for identification.)

Mr. Athearn: We offer next in order an agreement dated October 28, 1946, between the defendant and Flight Radio Officers Association, including an agreement dated April 16, 1946, appended thereto.

The Court: It may be admitted and marked.

(Testimony of Aubrey L. Charman.)

(Whereupon the agreement above referred to was marked Defendants Exhibit E for identification.)

Mr. Athearn: We offer next a memorandum dated April 2, 1949, in settlement of differences in Docket Case A-3102 of the National Mediation Board, including memorandum of agreement dated April 2, 1949, appended thereto.

The Court: It may be admitted and marked.

(Whereupon the memorandum above referred to dated April 2, 1949, was marked Defendants Exhibit F for identification.)

Mr. Athearn: We offer next an agreement dated February 6, [36] 1948, between the defendant and Transport Workers Union of America, C.I.O., including agreement dated January 12, 1948, and memorandum dated February 6, 1948, appended thereto.

The Court: It may be admitted and marked.

(Whereupon the agreement above referred to dated February 6, 1948, were marked Defendants Exhibit G for identification.)

Mr. Athearn: We offer next an award dated November 10, 1948, in the matter of an arbitration between the defendant and the Transport Workers Union of America, C.I.O.

The Court: It may be admitted and marked.

(Whereupon the award above referred to

(Testimony of Aubrey L. Charman.)

dated November 10, 1948, was marked Defendants' Exhibit H for identification.)

Mr. Athearn: Then we offer next four letters as a single exhibit, identical in nature, dated March 4, 1949, from the defendant to each of the plaintiffs. Is it all right to offer them as one exhibit?

The Court: You may. They may be marked next in order.

(Whereupon the four letters above referred to and dated March 4, 1949, were marked Defendants' Exhibit I for identification.)

Mr. Athearn: Next we offer a letter dated March 18—strike that—dated March 14, 1949, from Norman Leonard, Esq., to the defendant.

The Court: It may be marked next in order.

(Whereupon the letter dated March 11, 1949, above referred [37] to was marked Defendants Exhibit J for identification.)

Mr. Athearn: We next offer, finally, a letter dated March 18, 1949, from Leigh Athearn, Esq. to Messrs. Gladstein, Andersen, Resner and Sawyer.

The Court: It may be marked next in order.

(Whereupon the letter above referred to and dated March 18, 1949, was marked Defendants' Exhibit K for identification.)

Q. (By Mr. Athearn): Now, Mr. Charman, calling your attention to an agreement dated January 4, 1945, between the defendant and the Pan

(Testimony of Aubrey L. Charman.)

American Airways Navigators Association, which we are referring to here as Defendants Exhibit B for identification; and in particular calling for identification; and in particular calling your attention to Section 3-A thereof, I want to call your attention to this language:

“There shall be a system-wide—” excuse me, it is Section 3-C:

“In addition, the Company will exercise its best efforts to place Navigators in available positions for which they are qualified when the policy of using Pilot-Navigators is resumed. The method by which the Company will endeavor to make such assignments available to Navigators and the procedure for giving additional training to Navigators who have been selected will be that described in the memorandum on this subject dated December 20, 1944.”

Were you aware of that Section of the Navigators Agreement?

A. Yes. [38]

Mr. Leonard: Objected to, if Your Honor please, on the ground that it is incompetent, irrelevant and immaterial, and an inquiry of the witness with respect to a document which has been marked for identification and is not yet in evidence.

Mr. Athearn: This witness said he knew this was signed.

The Court: He has already answered “yes.”

Mr. Leonard: I understand that. He answered



(Testimony of Aubrey L. Charman.)

before I got my objection in so I move to strike it.

The Court: Motion denied. Objection overruled.

Q. (By Mr. Athearn): You were aware that was in the 1945 Navigator's Agreement?

A. Yes.

Q. Calling your attention to a memorandum dated December 20, 1944, captioned, "Training and Placement Program for Navigators," which we are referring to here as Defendants Exhibit C for identification, I call your attention to the first paragraph which reads:

"The Navigator group will face considerable curtailment when the Company resumes its policy to use Pilot-Navigators. Because of this problem and in order to retain in the Company, insofar as possible, the extensive flight experience gained by Navigators, the Company will exercise its best efforts to place Navigators in other available positions for which they are qualified in accordance with the following program." [39] Were you aware of the existence of this paragraph?

A. Yes. Not as concerned me.

Mr. Leonard: Your Honor, I move to strike the answer and I object to the question on the ground it is incompetent, irrelevant and immaterial, and an inquiry of the witness on a document which has not been received in evidence.

The Court: He can ask him the question directly. Objection overruled.

Q. (By Mr. Athearn): What was your answer?

(Testimony of Aubrey L. Charman.)

A. My answer was yes, but not concerned me.

Q. This is the memorandum which is referred to in the agreement referred to as Defendants Exhibit B, isn't it?

A. That is true. I had my contract with the Company. That was for the war-time hired navigators.

Q. Did you ever make any application in accordance with this memorandum for placement?

A. For replacement?

Q. Yes.

A. I believe they sent out a questionnaire requesting what position you desired in case the Navigators program was discontinued.

Q. When you say, they sent it out, you mean——

A. The Company.

Q. The defendant Company?

A. Yes. [40]

Q. What did you do about that?

A. I filled mine out and forwarded it to the Company.

Q. Did you follow that up in any way?

A. I beg your pardon?

Q. Did you take any—did you do anything further about that?

A. Nothing was offered me.

Q. You sent in your form, did you?

A. Yes, sir.

Q. And you never received a reply?

A. I had a talk.

Q. An interview?

(Testimony of Aubrey L. Charman.)

A. An interview, yes.

Q. What happened then? A. Nothing.

Q. Did you later inquire about the results of the interview or what was going to happen?

A. No, sir.

Q. Calling your attention to a memorandum dated April 2, 1949, in settlement of differences in Docket Case A-3102 of the National Mediation Board, which we refer to here as Defendants Exhibit F for identification, have you ever seen that memorandum, and the agreement appended to it?

A. How much time can I take to see this?

Q. Take your time. Generally, are you familiar with the fact that the agreement was entered into?

\* \* \*

The Court: Do you know what this is?

A. No, I will have to read it through. Offhand, I don't know.

The Court: That is all right. There is no need to get nervous about it at all.

A. No, sir, I have never seen that before.

\* \* \*

Q. (By Mr. Athearn): Calling your attention to paragraph 2 of an agreement between the defendant and the Transport Workers Union as representative of the Flight Radio Officers signed on April 2, 1949, this language:

“Employees severed by other than discharge or resignation shall be conclusively presumed to have

(Testimony of Aubrey L. Charman.)

been severed due to the advent of radio-telephone and shall receive \$3,000 at rate of \$600 per month."

Are you aware that such an agreement was entered into between the parties? [42]

Mr. Leonard: Objected to, if the Court please, on the ground no foundation has been laid. The witness testified he had never seen the document before. Furthermore, as Mr. Athearn just stated, the document is dated April, 1949, which is four months after the discharge of this witness, so that any agreement they made four months after the discharge of the witness couldn't affect his cause of action.

The Court: Objection overruled. He may answer if he knows.

Q. (By Mr. Athearn): Did you know any such agreement was entered into?

A. I was aware of such a thing by the grapevine.

Q. Do you know what the severance pay of Flight Radio Officers is now? A. \$3,000.

Q. If you had a job with the defendant right now as Flight Radio Officer, you would be entitled to \$3,000 severance pay?

A. If I was to leave, yes.

Q. I believe you said you were now operating a launderette, is that correct?

A. That is correct.

Q. Prior to that time you had an insurance business? A. That is right.

Q. How long has the launderette been operating?

(Testimony of Aubrey L. Charman.)

A. The launderette has been operating since January 10th.

Q. Of this year? [43]                      A. This year.

Q. Then what was your occupation or employment during 1949?                      A. Insurance agent.

Q. You gave us, I believe, some figures about your income tax during 1949. Would you repeat that?

A. My income tax form to the Government stated my income as being—exactly I can't tell you—around \$600 for the year 1949.

Q. Is that just for the insurance business?

A. That is just for the insurance business.

Q. What other income did it show you having?

A. None.

Q. So your total income was \$600?

A. That is correct.

Q. What was your wife's income?

A. What was my wife's income?

Mr. Leonard: I object to that as immaterial.

Mr. Athearn: This is just half of community income. We are entitled to know.

The Court: Objection overruled.

A. Zero.

Q. (By Mr. Athearn): In other words, the combined earnings of yourself and wife during 1946 was \$600?                      A. 1949.

Q. Pardon me, 1949. [44]                      A. True.

Q. You say you have two children?

A. Yes.



(Testimony of Aubrey L. Charman.)

Q. How much income tax did you pay in 1949?

A. I don't think I paid any.

Q. You filed a return showing \$600 income but no tax?

A. That is right.

The Court: Did you seek employment elsewhere?

A. Yes, sir, besides running the insurance business.

The Court: Where? [45]

A. Where? Around my domicile in Los Altos, Palo Alto.

The Court: What nature of work?

A. Anything that I could do, and was handling the insurance business at the same time.

The Court: All right. proceed.

Q. (By Mr. Athearn): Where did you get money to set up this launderette business?

A. Sale of my place and borrowing money.

\* \* \*

Q. (By Mr. Athearn): How is the launderette business doing?

A. It isn't paying expenses yet.

Q. You have had it how long?

A. Four months.

Q. How do you anticipate your income will be during the balance of the year?

A. It's income will increase slowly. To what extent, nobody knows. [46]

Q. Depends on your energy, doesn't it?

A. Depends a great deal on my energy, yes. Somewhat on the harvest of crops locally.

(Testimony of Aubrey L. Charman.)

Q. Have you any estimate what the income of that business will be when it is running at full tilt and established?

A. No. I can give you a reason for that answer.

Q. Go ahead.

A. It is a peculiar situation. Since I have been moved in there I have found out that it is a very peculiar little town. Lodi is a lovely little town, lot of pleasant people; but on the other hand it is relatively a wealthy town and a proportionately large number of people own their own washing machines, and when they get a nickel they do what I should have done—hang on to it. In other words, they don't patronize a launderette as much as they would in San Francisco in an apartment house area, so whether it will turn out or not—

Q. You are hoping it will turn out successfully?

A. Absolutely.

Q. I show you here a photostatic copy—what appears to be a photostatic copy of a check in the sum of \$1,888.25 appearing to be from the defendant to you, and ask you if you have ever seen that document before?      A. Yes, sir, I have.

Q. Drawing attention to the typewritten portion on the back reading: "This payment is made in accordance with an arbitration [47] award dated 11-10-48 and constitutes full and complete severance of the employer/employee relationship and is in satisfaction of all claims of whatever nature against the employer arising out of such relation-

(Testimony of Aubrey L. Charman.)

ship including but not limited to all claims for salary accrued and vacation earned but not taken." And directly under that in handwriting, "Signed under protest as to terms and conditions, A. L. Charman."

Now, is the handwritten part of this in your writing?        A. Yes, sir.

Q. And the typewritten statement was there when you signed that?        A. Yes, sir.

Q. You state you signed under protest, is that right?        A. Yes, sir.

Q. As to terms and conditions?

A. Yes, sir. [48]

\* \* \*

Mr. Athearn: Perhaps we should offer the document now as Defendant's Exhibit next in order.

Mr. Leonard: No objection.

The Court: It may be admitted and marked.

(Thereupon the check above referred to in the amount of \$1,888.25 was received in evidence and marked Defendant's Exhibit L.)

Mr. Leonard: Your Honor please, we have the objection I had to all these matters that arose out of the collective bargaining relationship. That is the culmination of that. Apart from that, no objection.

Q. (By Mr. Athearn): You stated it was under protest as to terms and conditions. What do you think the terms and conditions should be of that payment?

A. Terms and conditions should not have been

(Testimony of Aubrey L. Charman.)

payment on severance. That should have been transferred to Communications Department.

Q. Then you felt that the proper agreement and understanding between the parties was that you were entitled to this sum of money plus a job in the Communications Department, is that right?

A. Yes, that is right.

Q. Now, in your complaint you have asked for \$10,000 severance pay. Do you think this sum of money should be deducted from any severance pay you get?

A. Depends upon what the severance pay is based on. Our [49] \$10,000 severance is based upon retirement more than anything else. If we had stayed with the company we would have got company money in retirement, interest on our money that was in there.

Q. If you had a job with the company would you have gotten that sum that has been shown in that check?

\* \* \*

A. I don't know. [50]

\* \* \*

### Redirect Examination

By Mr. Leonard:

Q. Mr. Charman, directing your attention to Defendant's Exhibit A, which is a communication from you to the company under date of November 5, 1940, I think you testified on cross-examination

(Testimony of Aubrey L. Charman.)

you didn't recall sending that communication, is that correct?

A. That is correct.

Q. You don't challenge that that is your signature?      A. No, that is my signature.

Q. And you don't say you did not send the communication, but that you have no present recollection of having sent it, is that correct?

A. That is correct.

Q. If the company records indicate or reflect that in fact you did send that communication to the company on or about the 5th of November, 1940, you wouldn't contest or challenge that fact, is that right?      A. That is right.

Q. On or about the date you sent such communication, if you did send one, had there been any prior discussions with respect to this matter of transferring to the Navigations Department, or did you just send this out of the blue, so to speak?

A. No, we were requested whether we wanted to go into the Navigations Department, and it seems to me like we were told that those of us that offered to take on this added responsibility [52] would be chosen from the senior man down on the list. And we had to answer by letter, that was apparently it.

Q. Was it as result of your discussions with company officials that you sent the communication, if you did send it?      A. Yes.

\* \* \*

Q. (By Mr. Leonard): I think the records show



(Testimony of Aubrey L. Charman.)

you thereafter were transferred to the Navigations Department?      A. That is correct.

Q. In assuming your duties, you received those communications from the company with respect to your retransfer which are now in evidence?

A. Yes.

Q. Mr. Athearn asked you whether or not you protested because your name wasn't on a Flight Radio Officers Seniority List. Did you ever see a Flight Radio Officers Seniority List?

A. No, sir.

Mr. Leonard: Mr. Athearn, I wonder if you have the original list so we might show it to the witness? May we have this mimeographed document which Mr. Athearn just handed me marked for identification?

Mr. Athearn: I would like to have it be one of the [53] defendant's exhibits.

Mr. Leonard: No objection. No objection.

(Thereupon the Flight Radio Officers System Seniority List dated November 19, 1946, was marked Defendant's Exhibit M for identification.)

Q. (By Mr. Leonard): In response to my request of Mr. Athearn he has produced a document which has been marked Defendant's Exhibit M for identification; that is, in response to my request that he produce the Flight Radio Officers Seniority List. I will ask you to examine what Mr. Athearn

(Testimony of Aubrey L. Charman.)

has produced and state whether you have ever seen that document before.      A. No, sir.

Q. So that if your name is or is not on that list you never saw the list before?      A. No, sir.

Q. Now, this list bears the date, or says on it "Issued November 19, 1946." On November 19, 1946, were you a Flight Radio Officer?

A. No, sir.

Q. What were you?      A. Navigator.

Q. This was pursuant to a transfer which had occurred some five and one-half years prior to this date, is that right?      A. Yes.

Q. Were you at that time concerned with or active in the [54] affairs of any group referred to as Flight Radio Officers?      A. No, sir.

Q. Did you have any way of information concerning any seniority list that they were preparing?

A. No, sir.

Q. Did you have any way of information that your name was or was not put on the seniority list which they prepared?      A. No, sir.

Q. Directing your attention to this exhibit for identification I will ask you to examine it and state whether it appears on the face of it that the seniority roster by number is based upon a date of employment?

Mr. Athearn: Oh, we will object to that.

Mr. Leonard: I think he can look at the document and state what appears on the face of it.

Mr. Athearn: He has said he has never seen the document.

(Testimony of Aubrey L. Charman.)

The Court: In the opinion of this witness he has no knowledge of this document.

Mr. Leonard: The question was, if Your Honor please, if upon examination of it he could tell whether apparently seniority was based upon a date of employment. Of course Your Honor could examine, too.

Mr. Athearn: We will stipulate it was.

Mr. Leonard: I will accept the stipulation.

Q. Now, then, Mr. Charman, based on that stipulation and the [55] list, would you examine the list and indicate to the Court, where, taking into your consideration your date of employment as October 7th, I think the record shows, 1925, where your name would be on that list.

A. Number 9. No, pardon me, Number 10.

Q. Number 10? Now then, the man whose name is on the list as Number 9 is O. J. Johnson, whose date of employment or seniority date is July 6, 1935. That is correct, is it not? A. That is correct.

Q. And the man who follows him is one H. J. Nicks, whose date of employment is November 28, 1935. A. True.

Q. And your date of employment came between Mr. Johnson and Mr. Nicks? A. Yes, sir.

Q. Everybody on the list after Mr. Nicks is junior to you in time of employment, is that correct? A. True, yes, sir.

The Court: In what classification?

Mr. Leonard: This list, I think we can stipulate, counsel, in answer to the Court's question, deals

(Testimony of Aubrey L. Charman.)

with Flight Radio Officers and their seniority.

Mr. Athearn: Yes.

The Court: All right.

Mr. Leonard: If Your Honor please, with Your Honor's [56] consent and counsel's permission I wonder if I could have the record reflect the addition, for the sake of clarification and simple understanding, of the personnel on this list,—add in pen and ink Mr. Charman's name where he says it would be so Your Honor could have a visual picture of his condition. Do you have any objection?

Mr. Athearn: Let me check it. This is the only list we have. I want to check it. That will be all right. Just mark it on there.

Mr. Leonard: Thank you.

Mr. Athearn: It will be understood the ink interlineation put in by Mr. Leonard under Number 9 on page 1, being "Charman, A. L.," is being inserted now and was not on the document when it was issued.

Mr. Leonard: That is correct.

Q. Just so the record is clear, Mr. Charman, it is correct, is it not, that I have just now, with pen and ink, inserted your name in the place on the Seniority List where you contend it would be?

A. Yes, sir.

Mr. Leonard: I will also, Mr. Athearn, if you have no objection, put the date opposite his name.

Mr. Athearn: Fine.

Q. (By Mr. Leonard): Now, at the time that this list was prepared, I think you have already testi-

(Testimony of Aubrey L. Charman.)

fied and the record [57] shows that it was the result of some collective bargaining or arbitration or whatever the procedure was, between the Company and the Flight Radio Officers group?      A. Yes.

Q. That is correct, is it?

A. That is correct.

Q. Were you a member of that Flight Radio Officers group in November, 1946?

A. No, sir.

Q. Had you ever authorized that Flight Radio Officers group to bargain collectively for you?

A. No, sir.

Q. Had you ever authorized that Flight Radio Officers group to include your name on a Seniority List?      A. No, sir.

Q. Or exclude your name from a Seniority List?

A. No, sir.

Q. During that entire period which, as the record shows, was more than five years, almost six years, since your transfer, you were in the Communications—excuse me, in the Navigation Department?      A. That is correct.

Q. There was an entirely different group operating in that Department for collective bargaining purposes?      A. Yes, sir. [58]

Q. Incidentally, during that period that you were a Navigator was it necessary for you to obtain any kind of a Government license to function as a Flight Navigator?      A. Yes, sir.

Q. When you obtained—withdraw that. Was it necessary at the very outset to obtain such a license?



(Testimony of Aubrey L. Charman.)

A. No, sir.

Q. Did it later become necessary as the result of Government regulations that you obtain such a license?

A. Yes, sir.

Q. When was that, approximately?

A. 1946, perhaps. I would say 1947. I don't remember right offhand.

The Court: How long after that did you operate as a Navigator, after 1947?

A. Until November, 1948.

Q. What time in 1947 was your license, do you recall?

A. I don't recall, no sir.

The Court: All right.

Q. (By Mr. Leonard): In any case you did obtain such a license, did you?

A. Yes, sir.

Q. Also during the same period—withdraw that. As a Flight Radio Officer prior to 1941 was it necessary for you to have any Government licenses? [59]

A. Yes, sir.

Q. What kind?

A. Federal Communications Commission license.

Q. When you were functioning as a Flight Radio Officer prior to the time of your transfer did you have such a license?

A. Yes.

Q. Did you maintain that license in full force and effect?

A. Yes.

Q. During the period you were a Navigator?

A. Yes.

Q. Was it necessary—what was necessary in order to maintain the Radio Operators license in full force and effect?

(Testimony of Aubrey L. Charman.)

\* \* \*

A. A certain amount of actual operating time on a radio circuit.

Q. How did you obtain that actual operating time?

A. By relieving the radio man for meal periods on the planes.

Q. That is on the Pan American flights?

A. Yes.

Q. Was it necessary for any official to certify you did in fact relieve the radio man?

A. Yes.

Q. Did they so certify? [60]

A. Not specifically that I did relieve the radio man, but certified my services were satisfactory.

Q. In the field of radio? A. Yes.

The Court: By that you mean you indicated you spent so many hours in getting training and you qualified yourself for your license? A. Yes.

Q. (By Mr. Leonard): During the period you were functioning for the Company as a Navigator, Company officers certified that, to use His Honor's language, you spent the requisite number of hours as a radio officer to keep your License, your radio license in effect? A. Yes. [61]

\* \* \*

Q. You testified while you were a Navigator you also put in time as a Radio Operator?

A. Yes, sir.

Q. To your knowledge is that true of the other

(Testimony of Aubrey L. Charman.)

three plaintiffs in this case? A. Yes, sir.

Q. And to your knowledge is it true of them as it was of you that the Company certified to the appropriate Federal agency that they had put in sufficient time and their radio licenses were in fact renewed? A. Yes, sir.

Q. Do you know of any other navigators except for your four men, possibly three others, who were in the same situation? A. Yes, sir.

Q. There were other Navigators in the Pacific Division? A. Yes.

Q. How many?

A. Dixon, Campbell, Shaw, I believe it was.

Q. Any others?

A. Not that I recall offhand in the Navigators Group, outside of perhaps Ted—Theodore Hrutky.

Q. He is the brother of John Hrutky who is a plaintiff in this case? A. That is right. [62]

Q. So that in addition to the four plaintiffs there may have been four other Navigators who are also Radio Operators and were being certified as Radio Operators during the years in question, is that true? A. That is true.

Q. Possibly around eight folks in that situation?

A. Yes.

Q. In the Pacific Division? A. Yes.

Q. Do you know how many Navigators there were in the entire Pacific Division during the years in question?

A. I think the largest amount reached was 87 at one time.

(Testimony of Aubrey L. Charman.)

Q. 87? Do you know whether approximately 80 of those 87 persons were employed as Navigators after 1941 when you and the other men transferred over?

A. Yes, sir.

Q. That is correct?

A. That is correct.

Q. Those persons were not persons who had been Flight Radio Officers and had been transferred into Navigation as you had been, is that correct?

A. No, sir.

Q. They were Navigators who were employed during this defense, the war period, as Navigators?

A. Yes. [63]

Q. New employees of the Company?

A. Yes.

Q. Those men also were covered—withdraw that. Those men were covered by that arbitration award received, so far as you know, of the \$2,000?

A. That is correct.

Q. Since you left their employ, the employ of the Company, in November of 1948, Mr. Charman, have you made any effort to keep up your proficiency in the field of radio operation?

A. Yes, sir.

Q. What have you done to retain your proficiency?

A. I maintained my Naval Reserve duties. I had charge of a Communications Reserve Unit at Mountain View, and I recently transferred to Lodi when I moved up there, and I am now Communications Officer in charge of Communications Equipment in the Naval Reserve Electronic Company in Lodi.

(Testimony of Aubrey L. Charman.)

Q. That is a reserve component of the United States Navy?

A. Yes, sir. On top of that I have my own amateur radio station.

The Court: Do you work at it much?

A. As much as I can. I would like to do [64] more.

\* \* \*

(Thereupon a telegram was marked Plaintiff's Exhibit 3 for identification.)

Q. (By Mr. Leonard): This telegram, Plaintiff's Exhibit 3 for identification, Mr. Charman, is addressed not to you but to one of the other plaintiffs in this case, Mr. Cummings. First, I would like to ask you if you received an identical telegram to that? A. Yes, sir.

Q. And you have just lost your copy, and don't have it, is that it? A. Yes.

Q. All right, the telegram——

Mr. Leonard: Well, we offer the document in evidence, if Your Honor please.

The Court: No objection? It may be admitted into evidence.

(Whereupon the telegram above referred to and dated November 15, 1948, was received into evidence as Plaintiff's Exhibit 3.)

Mr. Leonard: I would like to read it to Your Honor at this point. Will it be stipulated, Mr. Athearn, so we can save some record time, that each of the plaintiffs receive an identical telegram? [65]



(Testimony of Aubrey L. Charman.)

Mr. Athearn: Yes, it will be so stipulated.

Mr. Leonard: And on the same day? All went out together?

Mr. Athearn: Substantially.

Mr. Leonard: "Dated November 15, 1948, 2:55 p.m. Effective close of business November 15, 1948, your services are terminated in accordance with arbitration award dated November 10, 1948. Letter follows. Wilson for Chief Pilot."

Q. Did you receive—you say you received such a telegram. Did you receive it on or about November 15th?      A. Yes, sir.

Q. At about what time of day?

A. Shortly after 3 o'clock.

Q. In the afternoon of that day?      A. Yes.

Q. Informing you your services would terminate as of close of business that day?

A. Yes. That was by telephone, by the way.

Q. You received it by telephone?

A. I received it by telephone with mail confirmation a day or so later.

Q. And what was your understanding of close of business? What time would that be?

A. Five o'clock.

Q. Five o'clock? So you had about two hours notice your services were terminated? [66]

A. Yes.

Q. On November 15th, 1948, when you received two hours notice of the termination of your service, you had been employed by the Company for about 13 years?      A. True.

(Testimony of Aubrey L. Charman.)

Q. Did you thereafter, Mr. Charman,—withdraw that. Mr. Athearn produced during the noon hour a copy of a document which I would like to show you, and ask you whether or not you sent the original of that document to the Company on or about the date it bears?       A. I did.

Mr. Leonard: May we have it marked, and I would like to offer it in evidence at this time.

The Court: No objection? Let it be admitted and marked.

(Thereupon letter dated December 4, 1948, Charman to Axe, was admitted into evidence as Plaintiffs' Exhibit 4.)

Mr. Leonard: May I read this to Your Honor? It is dated December 4th, 1948, addressed to Mr. D. E. Axe, Communications Manager, Pan American Airways, South San Francisco.

“Dear Mr. Axe: Due to the fact that the last arbitration award termed Non Pilot Navigators as being temporary and awarding the Company the right to release such men, in accordance with letters of January 10, 1941, signed by J. C. Leslie and G. W. Angus, and April 22nd, 1943, signed by J. H. Tilton and H. O. Gentry, I am hereby requesting assignment [67] to the Communications Department. Yours very truly, Aubrey L. Charman.”

Q. (By Mr. Leonard): Did you thereafter, Mr. Charman, receive a response from the Company to your letter of December 4th?       A. Yes, sir.

Q. I show you this document, which was pro-

(Testimony of Aubrey L. Charman.)

duced by Mr. Athearn and ask you if that is a copy of the response you received?

A. Apparently that is it, word for word.

Mr. Leonard: We offer it in evidence, if Your Honor please, as our exhibit next in order.

The Court: It may be admitted and marked.

(Whereupon letter dated December 6, 1948, Axe to Charman, was admitted into evidence as Plaintiffs' Exhibit 5.)

Mr. Leonard: I would like to read this, Your Honor. Dated December 6, 1948, addressed to Mr. Aubrey L. Charman, 619 Jay Street, Los Altos, California.

"Dear Mr. Charman: This will acknowledge receipt of your letter of December 4 wherein you request reinstatement in the Communications Department in accordance with a letter directed to you under date of April 22, 1943.

"Investigation discloses that our letter dated April 22, 1943, had reference to, and was in confirmation of, a letter drawn jointly by the Operations Manager and the Communications Superintendent under date of January 10, 1941, wherein it was stated that individuals drawn from the [68] Flight Radio Officer group for service as Navigators would be returned to the FRO group should the navigating function be deleted.

"Two factors now preclude reinstatement action on our part. These are: (a) the FRO's are now covered by a contract which definitely establishes a

(Testimony of Aubrey L. Charman.)

seniority roster upon which your name does not appear as being eligible for re-employment within the group; and (b) the intent of the letter of January 10, 1941, was that re-transfer to the FRO group might be accomplished within a reasonable time limit.

“Although no commitment exists, we regret that we do not have any ground vacancies in which we might offer you employment at this time. We shall, however, give your request for re-employment by the Communications Department every possible consideration in the future should vacancies occur wherein we might be able to utilize your services. Yours very truly, Delvin E. Axe, Manager, Communications.”

Q. In connection with Defendant's Exhibits B and C, for identification, which were the contract with the Navigators group and the Company memorandum on Placement of Navigators in December, 1944, I think you stated you did fill out a questionnaire and had an interview, is that correct?

A. That is correct.

Q. Did you submit the questionnaire to the Company? [69]

A. I believe I took it with me to the interview.

Q. By whom were you interviewed?

A. Mr. Maxwell, as I recall it.

The Court: Fix the time.

Q. (By Mr. Leonard): Yes, when did this happen, Mr. Charman?           A. Date?



(Testimony of Aubrey L. Charman.)

Q. Yes, approximately. A. I don't know.

The Court: Approximately.

Q. (By Mr. Leonard): Perhaps these documents will help, the Company memoranda on which is a date December 20, 1944. Can you fix the time in relation to that? How long after that was it?

A. I think it was quite some time after 1944.

Q. The agreement which refers to the memoranda was apparently signed in January, 1945. Was it after that?

A. I believe 1946 sticks in my mind. I wouldn't say that is the date, but 1946 sticks out for some reason.

Q. Is it possible for you to help us by indicating what time of the year it was, spring, summer, winter—— A. No, I couldn't.

Q. You stated you think a year after these documents were issued? A. Yes, I think so.

Q. Well, where did the interview take place?

A. In Mr. Maxwell's office. [70]

Q. Whereabouts?

A. In South San Francisco, at the Airport.

Q. You say you took a questionnaire form with you to the interview? A. As I recall, yes.

Q. Had you then filled it out, completed it before you went in to the interview? A. Yes, yes.

Q. What was said by you and what was said by Mr. Maxwell on the question of your going back to the FRO group—withdraw that, on the question of your reemployment when the Navigator's position no longer existed?



(Testimony of Aubrey L. Charman.)

A. Nothing, specifically. As a matter of fact, I thought it was somewhat a waste of time. I took the application and looked at it. As I recall, the application named three choices of position, positions desired in case the Navigators group was done away with. The first was Communications, I believe; the second was Operations Department, and I don't know what the third one was.

Q. Are you stating that this was a choice that you indicated in the application?

A. That was the choice that I indicated in the application.

The Court: What was the choice?

A. Communications Department, and Operations Department as [71] airport manager next.

Q. (By Mr. Leonard): Communications was first choice, and Operations second?

A. That is right.

\* \* \*

Q. At any rate, you submitted this questionnaire application to Mr. Maxwell, did you?

A. Yes, sir.

Q. Did that terminate the interview?

A. That did, except for, "Well, we will see what we can do," or words to that effect.

Q. And you went back, did you, and resumed your duties as a Navigator? A. True.

Q. Did you ever hear from the Company again in connection with that application?

A. No, sir.

Q. Now, directing your attention to Defendant's

(Testimony of Aubrey L. Charman.)

Exhibit F for identification, *with* is the document executed on April 2, 1949, that was some four and one-half or five months after your termination and some two or three months after the present [72] action was filed, that is correct, is it not?

A. That is true.

Q. All right, you stated you hadn't seen that document, but having read it you said you understood by the grapevine that the Company could lay off Flight Radio Officers on payment of \$3,000 severance pay. Is that substantially what you testified in answer to Mr. Athearn? A. Yes.

Q. On that same basis, what is your understanding of the Company's right to lay off any men on this seniority list in exchange for \$3,000 severance pay? Can the Company pick and choose any man they want to lay off, or how is that done?

A. My understanding of this present operation is that if there is to be a cut-back they offer the choice of resigning to the Senior Radio men. They can resign and take their \$3,000. If nobody chooses to resign the Company can reduce forces from the bottom of the Seniority List.

Q. In other words, to take this set-up, assume that the Company wanted to lay off ten men. The top ten men on that Seniority list, which, as I have interlineated it would include your name, would have the choice of resigning and accepting the \$3,000.

A. I think anybody on the Seniority List could go ahead and take it and resign provided no nine were before me, if you get what I mean. In other

(Testimony of Aubrey L. Charman.)

words, if the ten senior men wanted to [73] take that and take the \$3,000 they could. If those ten wanted to stay and then eleven through twenty wanted to resign, they could.

Q. In other words, the original acceptance would be men who had the seniority? A. That is it.

Q. If the Company wanted to cut back ten jobs and, let's say, only five men wanted to resign and accept the \$3,000, then how would the Company cut back the other five jobs?

A. Off the bottom of the list.

Q. Off the bottom of the list? So that if you were a Flight Radio Officer on that list, the Company, as you understand it, couldn't cut back your job and force you to accept \$3,000 until it went all the way up the list in reverse order until it reached your position? A. That is true.

Q. That is your understanding? I believe that is all. Excuse me, Mr. Charman, I remember one other matter. Mr. Charman, after your receipt of the checks which are marked Defendant's Exhibit L for identification, did you receive another check from the Company? After you received this one for eighteen hundred and some dollars, did you get another check?

A. I think I got a check for vacation accrual time.

Mr. Athearn: Your Honor, I should have offered those. I simply overlooked these two checks. I now offer them as [74] Defendant's exhibit next in order, check in the sum of \$289 to Aubrey L. Char-

(Testimony of Aubrey L. Charman.)

man bearing the notation on the back it is for additional vacation.

The Court: That may be admitted and marked.

(Whereupon the check above referred to in the sum of \$289 was admitted into evidence and marked Defendant's Exhibit N.)

Mr. Leonard: May the record show we make the same objection to this as to the other one, Your Honor?

The Court: Very well, the record so shows.

Mr. Leonard: And may I read to the Court (it is in evidence) the notation on the back. This is after the first check, which, as Your Honor will recall, said it constituted full and complete severance of the employee/employer relationship. After that this happens, a further check: "This payment is for additional vacation which was not included in the check bearing general release form for payment made to you in accordance with arbitration award dated November 10, 1948." That is typed on the reverse side of the check, and in handwriting, "Endorsed under protest as to terms and conditions, Aubrey L. Charman."

Q. Mr. Charman, for the record, the endorsement which I just read is in your handwriting, is it not?           A. Yes, sir. [75]

\* \* \*

Q. Mr. Charman, do you know what the salaries of a Flight Radio Officer who has seniority back to October 7, 1935, is with the Company at the present

(Testimony of Aubrey L. Charman.)

time?           A. I believe it is \$610 a month.

Mr. Leonard: That is all.

### Re-Cross Examination

By Mr. Athearn:

Q. Mr. Charman, I just have a few questions: I understood that you said that while you were a Navigator you now and then would take a little bit of experience on the radio in order to keep your licenses in force?           A. Yes, sir.

Q. Did the company tell you to do that?

A. I beg your pardon?

Q. Did the Company tell you to do that?

A. Not that I ever recall.

Q. You just did it on your own hook, didn't you?

A. We did it on our own hook. Somebody had to sit on the radio circuit so the radioman could go to lunch and not leave the radio circuit empty.

Q. It is true not only Navigators have radio licenses, but pilots have radio licenses, do they, too?

A. That is correct.

Q. They do it in order to keep their own licenses? [76]           A. That is correct.

Q. I think you said you would have your radio license endorsed by an officer to show you had done the work?           A. That is correct.

Q. Who would do that?

A. Usually the man in charge of the Communications Department.

Q. During the period you were a Navigator who was that?



(Testimony of Aubrey L. Charman.)

A. Well, there were two of them. There was Mr. Gentry—might have been three—Mr. Axe, and I think a Mr. Gleason.

Q. How about Mr. Poindexter? Did you ever do any business with him?

A. Not for signing licenses.

Q. You would on returning from a trip take the licenses into one of these gentlemen you have mentioned and ask him to endorse it?

A. No, sir, the license would be endorsed when it was due to be retired and to be renewed.

Q. Then what did you do about it?

A. Then it was to be endorsed for the previous service.

Q. Who sent the license in?

A. For renewal?

Q. Yes.

A. Either yourself or the Company.

Q. You said in one license you did.

A. I believe I did my last one, yes. I am pretty sure I did. [77]

Q. Who would go arrange to pick up your license? A. It would be mailed to us.

Q. Pardon me? A. Mailed to us.

Q. I see. During the time you were a Navigator did you ever go into the Flight Radio Officers office?

A. Once in a while to say hello to Jack Poindexter.

Q. Do you know about when that would be?

A. No, sir.

Q. Could free access to that room—you had free

(Testimony of Aubrey L. Charman.)

access to that room any time you wanted, didn't you?      A. Yes, sir.

Q. You would go in to see Mr. Poindexter?

A. Yes, sir.

Q. Do you think you were in there in the early part of 1947?      A. I wouldn't know.

Q. You wouldn't say you were not in there?

A. That is right.

Q. Will you say for a fact you were not in the Flight Radio Officers room during the month of December, 1946, at any time?

A. Would I say that I wasn't?

Q. Yes.

A. I couldn't say that I wasn't.

Q. You may have been in there and——

A. That is right. [78]

Q. Seeing Mr. Poindexter?

A. That is right.

Q. You might have been in there during the month of January, 1947?      A. That is right.

Q. And you are free to go in there any time you wanted?      A. That is right.

Q. That is called the Flight Radio Officers' room, is it?

A. No, it was still the Office of the Chief Flight Radio Officer.

Q. It was to that point Flight Radio Officers would come in and get instructions, and so forth?

A. That I don't know.

Q. But you would go in to see Mr. Poindexter anyhow?      A. That is true.

(Testimony of Aubrey L. Charman.)

Q. Did you ever notice the bulletin board in the room?           A. No, sir.

Q. Never saw it at all?           A. No, sir.

Q. Would you say there wasn't a bulletin board in there?

A. As far as I know there wasn't a bulletin board in there.

Q. But you wouldn't say for certain there wasn't one? Are you saying there wasn't one or that you don't know?

A. As far as I know there was no bulletin board in there. You don't go into a man's office and nose around. [79]

Q. As I understand, this Seniority List which is being referred to as Defendant's Exhibit M for identification you never saw before today, is that right?           A. That is right.

Q. Therefore you haven't had a chance to examine all the way through it or its terms?

A. That is correct.

Q. However, you have stated that on the basis of your hiring date you would fall under the ninth position on it where your name has been written in by Mr. Leonard?           A. That is true.

Q. I want to call your attention more carefully to this. You will notice the first page of this document has (Exhibit M) a caption "Active List"?

A. That is correct.

Q. And it goes over for several pages, name after name, until it gets a page 16 when it is captioned, "Inactive List, Group A"?

(Testimony of Aubrey L. Charman.)

A. Yes.

Q. You have never examined over this far in the List? A. No.

Q. Further down on page 17, "Group B"?

A. Yes.

Q. And calling your attention to page 19, you have never read that page before, then? [80]

A. No.

Q. I would like to call your attention to the fact that that page starts with "Notes," and Note 5 reads: "On the Inactive List, Group B consists of those former Flight Radio Officers who accrued seniority as such—" pardon me, I meant Note 4:

"On the Inactive List, Group A consists of those former Flight Radio Officers who are now in Ground positions involving supervision of Flight Radio Officers and who therefore continue to accrue seniority."

A. Yes.

Q. Now, on November 19, 1946, were you employed in a ground position involving supervising Flight Radio Officers? A. No, sir.

Q. Then I call your attention on page 19 of Exhibit M to Number 5, the note which reads:

"On the Inactive List, Group B consists of those former Flight Radio Officers who accrued seniority as such but who are no longer accruing seniority due to the nature of the positions held by them since leaving the Flight Radio Officers group and those who have been

(Testimony of Aubrey L. Charman.)

relieved from the group due to reduction in force."

On November 19, 1946, you were not in the Flight Radio Officers group, were you?

A. No, sir. [81]

\* \* \*

Q. On November 19, 1946, you were a former Flight Radio Officer who was no longer in that position?

\* \* \*

A. That is true, with a contract to return to it.

Q. (By Mr. Athearn): Now, I think you mentioned about some other people working for the Pacific Division of the defendant who were in somewhat the same position as yourself, is that [82] right?

A. That is true.

Q. I think we had eight persons, approximately, who were former Flight Radio Officers who were working as Navigators at a subsequent time?

A. That is true.

Q. I think you mentioned the name of Theodore Hrutky, is that correct?

A. That is true.

Q. He is the brother of one of the plaintiffs?

A. True.

Q. Calling your attention to page 3 of the Seniority List, Exhibit M for identification, and particularly to the person on the Active List designated at Number 68, "Hrutky, T. M.," is that the gentleman you refer to?

A. Yes.

Q. After his name under the caption "Seniority Date" it shows 3-29-40, is that correct?



(Testimony of Aubrey L. Charman.)

A. That is correct.

Q. At any rate the first date Mr. Theodore Hrutky went to work for the defendant was on March 29, 1940? A. I guess so.

Q. Isn't it a fact he went to work a long time before that? A. I don't know.

Q. Isn't it a fact he is a person who was a Flight Radio [83] Officer at the same time you when you were transferred out of the group?

A. No.

Q. What had happened to him in 1941?

A. I believe he was still on the ground. I don't know whether he was.

Q. I see. He was in the Communication Department? A. That is correct.

Q. Then he became a Navigator?

A. It was about—no, he became a Flight Radio Operator, first, I am pretty sure, then a Navigator.

Q. Pretty much like yourself, is that correct?

A. Yes.

Q. Then by the time this list came out he was back as a Flight Radio Officer? A. True.

Q. But you don't know whether the date 3/29/40 is the time he went to work for the Company actually, or whether it is a simulated seniority date?

A. I do not know.

Q. Now, referring to this telegram, Plaintiffs' Exhibit 3 for identification, as I understand it a similar wire was telephoned to your home?

A. True.

(Testimony of Aubrey L. Charman.)

Q. You were at home on that day? [84]

A. Yes.

Q. You were not working that day?

A. I wasn't called to duty that day, no.

Q. Had you been working the day before?

A. I couldn't say.

Q. Have you any idea?           A. No, sir.

Q. Isn't it a fact that you hadn't done any work since May of 1948?

A. No, sir, that is not true.

Q. You had been actually flying?

A. Not flying, no.

Q. What had you been doing?

A. Ground activities for the Company, whatever was requested of us.

Q. What was requested of you?

A. Ground activities of various types.

The Court: Give me some idea what you mean by ground activity.

A. Check airplanes prior to departure to see all navigation equipment was aboard and take it off the airplane and send it back to the checker after the airplane arrived from trips. Oh, various things, various times I had various types of jobs. I can't recall them all now.

Q. (By Mr. Athearn): How long had it been since you had acted [85] as navigator prior to the time you got that wire?

A. I don't know when I made my last trip.

Q. Do you think it was a day or two before?

A. No, quite some time.

Q. Maybe six months before?

(Testimony of Aubrey L. Charman.)

A. I believe it was over six months.

Q. You had been grounded for six months before you got the wire, hadn't you? A. Grounded?

Q. Yes.

A. Let's not use the term "grounded."

Q. You hadn't been doing any flying?

A. That is true.

Q. They had been giving you and the other Navigators minor duties to perform? A. True.

Q. How many hours a week do you think you put in on the ground duty?

A. That varies. I don't know.

Q. Do you think you put in 40 hours a week?

A. I think it would average just about 40 hours a week.

Q. You knew this arbitration was pending involving Navigators at the time you got the wire, did you not? A. True.

Q. So in truth the notice you got was not a complete surprise? [86] A. Absolute surprise.

Q. You didn't think the decision was going to come out that way, did you? A. No, sir.

Q. But you knew the whole matter was up for decision before the Arbitration? A. Yes, sir.

Q. And this was a distinct disappointment to you? A. Absolutely.

Q. You felt pretty sure, didn't you, that the arbitration was going to hold that the Company was going to have to employ Navigators? A. Yes.

Q. That is the reason why you didn't take a job as Flight Radio Officer earlier, isn't it?

(Testimony of Aubrey L. Charman.)

A. No, sir.

Q. Why didn't you take a job as Flight Radio Officer earlier?

A. I don't recall a job being offered.

Q. You remember an interview you had with Mr. Maxwell in 1946, don't you?      A. Yes.

Q. You recall he advised you to get back into the FRO group as fast as you could, don't you?

A. I don't recall that he said that, no.

Q. Would you say he didn't say that? [87]

A. He did not say. He didn't say it.

Q. He never said it?

A. He never said it.

Q. Did anybody ever advise you to get back into the FRO group?      A. Not that I recall.

Q. But you wouldn't say no one did advise you?

A. That is true.

Q. When did you apply for an FRO job first, subsequent to the time you became a Navigator?

A. You mean after I was a Navigator when did I apply for it?

Q. Yes.      A. I don't know.

Q. Now there is a letter from you here to Mr. Axe in November of—December 4th, 1949, which we are referring to as Plaintiff's Exhibit 4.

A. Yes.

Q. Is that the first time you asked for an FRO job?

A. First time I have any recollection of directly asking for an FRO job.

(Testimony of Aubrey L. Charman.)

Q. With reference to the present severance pay for Flight Radio Officers in the sum of \$3,000, you testified concerning that, your understanding of that arrangement, did you not? A. Yes, I did.

Q. That the men had to be laid off from the bottom of the seniority list unless they chose to retire? [88]

A. True.

Q. And that is your understanding of the present arrangement?

A. That is my understanding.

Q. Isn't it also your understanding of the present arrangement if the Company desired to hire no more Flight Radio Officers then every man on the List up to Number 1 could be paid off for \$3,000?

A. Why, true, sure.

Q. In other words, it is entirely up to the Company, even if you were Number 9A, if the Company wanted to lay off all but nine Flight Radio Officers you would get only \$3,000 severance pay?

A. Plus the salary in the meantime, yes.

Q. That is your understanding? A. Yes.

\* \* \*

### Redirect Examination

By Mr. Leonard:

Q. You stated, Mr. Charman, that while you were a Navigator there was endorsed on your license the fact that you did put in eight hours as a Radio Operator, and your license was forwarded to Washington for renewal?



(Testimony of Aubrey L. Charman.)

A. I believe I sent it to the local Federal Communications Office and they forwarded it. [89]

Q. You said sometimes you sent it, sometimes the Company sent it, is that right?

A. When we were active FRO's the Company handled it for us.

Q. During the period you were a Navigator did you send it to Washington? A. Yes.

Q. All during that period?

A. As far as I recall, yes.

Q. In your own testimony, brought out with respect to going into Mr. Poindexter's office, counsel referred to the Flight Radio Officers room. Where was the—where was Mr. Poindexter's office located?

A. On the second floor, of the—well, I guess you would call it the Administration Building.

Q. Where?

A. South San Francisco, at the Airport.

Q. Down at the Airport? A. Yes.

Q. Where was the Navigators' room or Navigators' quarters? Where were they located?

A. At different times they were in two buildings. One was in the north end of the Maintenance Building at the Airport and the other was in the Terminal Building.

Q. The Maintenance Building and the Terminal Building that you speak of, are they separate and distinct from the Administration [90] Building?

A. Yes.

Q. Are they removed from it by any distance?

A. Half a block to a block.

(Testimony of Aubrey L. Charman.)

Q. When you were functioning in the Navigators' group from 1941 until 1948 where did you congregate and go to get your orders, instructions, or whatever you had to get in connection with your job?      A. The Navigation Office.

Q. Did you normally or usually have any duties or business that would take you to the Flight Radio Officers room?      A. No, sir.

Q. Were these regarded as two separate and distinct crafts?      A. Yes, sir.

Q. They had different quarters and operated differently?      A. Yes.

Q. Did they have different supervisory personnel?      A. Yes.

Q. And, as I understand it, you had simply been transferred from one craft to the other?

A. Yes.

Q. And all during the period in question you were operating as a component part of the navigators craft?      A. That is true.

Q. At any time during that period you were operating as a [91] component part of the navigators craft were you ever offered employment in the Flight Radio Officers group by any responsible official of the Company?      A. No.

Q. Then after your services as a Navigator were terminated by phone and telegram you made application for transfer back to the Communications group?      A. That is correct.

Mr. Leonard: That is all.

(Testimony of Aubrey L. Charman.)

Recross-Examination

By Mr. Athearn:

Q. I don't want to extend this, but there is one question: Isn't it a fact in December of 1946, and January, 1947, both the Flight Radio Officers' room and the Navigators' room were located in the Administration Building?

A. I don't recall the Navigators office in the Administration Building. If I am wrong, if somebody would correct me. I honestly don't recall it.

Q. Your recollection is that the Navigators' office was never in the Administration Building?

A. That is my recollection.

Q. And the Flight Radio Officers' room was on certain occasions in the Terminal Building and at others in the Hangar Building, was it?

A. The Flight Radio Officers?

Q. Yes. [92]

A. The Flight Radio Officers, so far as I know, was on the second floor of the Administration Building.

Q. During the entire time that you were a Navigator?      A. As far as I can recall, yes.

Mr. Athearn: That is all.

A. No, excuse me, not during the entire time I was a Navigator. During the entire time we were in the South San Francisco Airport.

Q. (By Mr. Atheran): Yes, I understand, yes. During the entire time you were a Navigator and the Company's base was in South San Francisco.

(Testimony of Aubrey L. Charman.)

A. May I make this statement? While we were on Treasure Island the Communications Office and the Navigation Office were right next door to one another, but that terminated when we moved to Mills Field. I don't recall the date.

Mr. Athearn: No more questions.

Mr. Leonard: Prior to 1946 when this document was promulgated? A. Yes.

Mr. Leonard: Mr. Athearn, in view of your comments with respect to Group A and Group B, can it be stipulated Mr. Charman's name appears in neither Group A or Group B on this?

Mr. Athearn: His name appears no place on the list except where you inserted it this morning. [93]

\* \* \*

JOHN ANDERSON HRUTKY

a plaintiff herein, was called on his own behalf, sworn.

The Court: What is your full name?

A. John Anderson Hrutky.

The Court: Where do you live?

A. Oakland, California.

The Court: And the address?

A. 3947 Gardenia Place.

The Court: How long have you lived there?

A. About a year and half now.

The Court: All right.

(Testimony of John Anderson Hrutky.)

Direct Examination

By Mr. Leonard:

Q. What is your age, Mr. Hrutky?

A. Thirty-five.

Q. What formal education do you have?

A. Oh, about two years—three years high school.

Q. And thereafter— [94] A. After that?

Q. What did you do?

A. I went to a radio school for approximately two years.

Q. Which radio school?

A. Central, in Oakland.

Q. State generally what you studied there?

A. Well, electrical shop work, wiring, both radio and electrical wiring, and radio theory, and operating and maintenance work of transmitters and receivers, all the background necessary to get a Commercial Radio Operator's License.

Q. Did you ultimately obtain a Commercial Radio Operator's License? A. Yes.

Q. Approximately when did you first obtain it?

A. I believe it was in 1932 or 1933.

Q. And did you thereafter obtain employment as a radio operator?

A. Yes, with the Alaska Salmon Company. I went to Alaska as a radio operator during the fishing season.

Q. This was maritime? A. Yes.

Q. Radio operator aboard ship? A. Yes.



(Testimony of John Anderson Hrutky.)

Q. How long did you continue to work as a radio operator aboard ship?

A. I went with United Fruit Company for about two years. [95] Well, up until the early fall of 1937.

Q. Then what employment did you obtain?

A. At that time I started in as Assistant Radio with Pan American Airways.

Q. During the time you were radio operator aboard ship, before you went to Pan American, what licenses, if any, did you hold?

A. I held a Second Class Radio Operator's License, and after I attained sufficient experience and training I succeeded in obtaining a First Class License.

Q. So that when you went to work for Pan American you had a First Class Commercial Maritime Radio Operator's License, is that correct?

A. Yes.

The Court: Fix the time when you went to work for them.

A. Let's see, I think it was July, 1937.

Mr. Leonard: I think we can stipulate in just a moment, Your Honor, to some of these facts. I think, if Your Honor please, we are prepared to stipulate, and this will save the record. For the record, that Mr. Hrutky was first employed by defendant herein as an Assistant Radio Operator on July 16, 1937.

The Court: All right.

Mr. Leonard: That he became a Flight Radio Officer, or reclassified as Flight Radio Officer on May

(Testimony of John Anderson Hrutky.)

1st, 1938, and was reclassified as a Radio Operator on August 1st, 1940. He was [96] reclassified as a Junior Navigator on February 1st, 1941; reclassified as Non-Pilot Navigator on June 18, 1941. He was reclassified as a Navigator on March 16, 1947. He was reclassified as a Non-Pilot Navigator on March 16, 1948. And his employment was terminated on November 15, 1948.

Mr. Athearn: We will so stipulate.

Mr. Leonard: Thank you.

The Court: The record so shows.

Q. (By Mr. Leonard): In a very general way, Mr. Hrutky, will you state what your duties as an Assistant Radio Operator and a Radio Operator were? Well, let me ask you this. I think there won't be any objection. Those were ground duties, were they? A. Yes.

Q. And you performed duties as radio operator on the ground? A. Yes.

Q. You were here this morning, were you, when Mr. Charman testified with respect to the nature of those duties? A. Yes, I was.

Q. And the duties you had were substantially as he described them? A. Closely parallel, yes.

Q. Now, the stipulation which we have entered into on the record shows for the period of time of from May 1st, 1938, until August 1st, 1940, you were a Flight Radio Officer. Those duties had to do with operating radio equipment, maintaining [97] radio contact how? Aboard aircraft in flight?

A. Right.

(Testimony of John Anderson Hrutky.)

Q. And you also heard Mr. Charman's general description of the nature of those duties, and would you say those are substantially the same as the duties you performed in that capacity? A. Yes.

Q. Will you tell us what ground duties, and so on, you performed, and airport radio duties?

A. Well, I started with the Company, I was assigned first at the Alameda Station on the ground, and we were working a point to point station with various island stations from Honolulu to Manila, exchanging weather information and so forth. Then I also manned a DF station—direct finding station, direct bearing of aircraft which was transmitted to the plane and was an act of navigation. And was Assistant Radio Operator in Wake Island approximately six months.

Q. During what period of time?

A. That was from the fall of 1937 until the spring of 1938. In 1938 I transferred to flight duty and stayed on there as a Flight Radio Officer for several years, I think two years.

Q. What route did you fly?

A. Oh, from Alameda to Hongkong and return. That was before the SOPAC trips were started.

Q. By SOPAC you mean South Pacific?

A. Yes. I think it was in about June, 1940, I was reclassified [98] again, somewhere around that date, as a Chief Radio Operator and stationed about seven months at Canton Island. About that time the SOPAC operation started, and so we manned ground stations on that route. I stayed there until

(Testimony of John Anderson Hrutky.)

about February of 1941, but while I was there I also studied Navigation, and that was a correspondence course offered to any personnel that desired to take advantage of it.

Q. This was a course put out by the Company?

A. That is true.

Q. For its personnel that desired to study Navigation?      A. Yes.

Q. And you studied it?

A. I think it was prepared with the idea in mind that airport personnel, particularly airport managers, should take advantage of it in case an airplane should go down in the vicinity of one of our islands, they should be able to man the station lines in the vicinity of the landing and assist. About that time when I was based at Canton Island, I somehow received the word from the Company that there would be a possibility of joining up the Operations Department as Navigator, I don't remember through a letter or by word of mouth or how it happened. I made request for that duty at that time.

The Court: When was that? Fix it as near as you can.      A. That was in the fall of 1940.

Q. (By Mr. Leonard): In response to that information which [99] you had received, did you submit a communication to the Company on that subject, a possible transfer into Navigation?

A. Yes.

Mr. Leonard: May I have this marked as exhibit next in order?

(Testimony of John Anderson Hrutky.)

Mr. Athearn: I would like to have that be one of our exhibits, as part of our case.

Mr. Leonard: No objection. I don't care how it is marked.

The Court: Very well.

(Thereupon memorandum dated November 12, 1940, from John A. Hrutky to Division Superintendent, was marked Defendant's Exhibit O in evidence.)

Q. (By Mr. Leonard): I show you what has been marked as Defendants' Exhibit O, and ask you if that is the original of the communication you addressed to the Company on or about November 12, 1940?

A. That is my signature, but I don't remember what it is, but that is it.

Q. Does that look like it?            A. That is it.

Q. You don't make any contention that you didn't send this communication?

A. No. [100]

\* \* \*

Q. (By Mr. Leonard): 'Thereafter, Mr. Hrutky, did you receive any response from the Company to that Communication?

A. Well, I don't recall any official answer to that particular letter except that upon my termination of duty, tour of duty at Canton Island I got back to San Francisco, I was transferred to the Operations Department and received this other letter.

Q. You say you returned to San Francisco, and



(Testimony of John Anderson Hrutky.)

upon returning [101] to San Francisco you were transferred to Operations. According to the stipulation with counsel for defendants, Company records show you were reclassified as Junior Navigator on February 1st, 1941, some three months or thereabouts after the date of that document we just read. Would that be about the time you were transferred to Operations?      A. Yes.

Q. February, 1941, or prior to that time that you were transferred to Operations, you had received, had you not, a communication from the Company in connection with that transfer?      A. Yes.

Q. In that connection I direct your attention to Plaintiff's Exhibit 1.      A. Yes.

Q. Which, as the record shows, is a document actually addressed to you, of all the plaintiffs, and I ask you if that is the letter you got from the Company?      A. That is it, correct.

\* \* \*

Q. Thereafter did you assume your duties as Navigator?      A. I started training.

Q. First you took training? How long did that training course last? [102]

A. Until my last reclassification around June.

Q. June 18, 1941, is that about right?

A. Yes.

Q. So that it was about a three and one-half month's training course?      A. That is correct.

Q. Then in June, 1941, did you actually commence flying as a Navigator?

(Testimony of John Anderson Hrutky.)

A. That is right.

Q. And during the time you were flying as a Navigator, I take it, you too received a copy of the communication which is in evidence as Plaintiff's Exhibit 2; letter of April 22, 1943, referring to the matter of your transfer back to Communications?

A. Yes.

Q. You received such a communication?

A. Yes.

Q. After that, you continued, did you not, to fly as a Navigator?           A. That is right.

Q. According to the stipulation we have with the Company, you were reclassified as a Check Navigator in March, 1947, is that correct?

A. True.

Q. Will you state what a Check Navigator is? Apparently Mr. Charman wasn't, so we have a new classification here. [103]

A. Let's see, 1947. I believe that is starting training additional navigators, also junior pilots as navigators, and at first they had to take a course of navigation training on the ground, then they were assigned in the air to make several trips as navigators under supervision of a qualified Navigator.

The Court: That is what you call a Check Navigator.

A. Generally a check had him on his last trip, gave him additional follow up work.

The Court: Final work-out?

A. That is right, more or less of a final work-out after additional training in the air.

(Testimony of John Anderson Hrutky.)

Q. (By Mr. Leonard): If I understand it, your responsibilities and duties as Checker entailed your checking on the navigational abilities of other personnel, is that right? A. That is right.

Q. And did you have, in that position, occasion to pass upon the abilities of other persons?

A. I passed them or rejected them.

Q. You passed them or rejected them depending on how they responded to the test, I suppose?

A. That is right.

Q. According to our stipulation you remained in that position for just about one year, is that about correct? A. Yes.

Q. Was there any kind of salary differential?

A. We received an additional sum, I think, of \$25 a month extra.

Q. In that connection, how much was your salary as a check Navigator?

A. At that time \$625 per month.

Q. The other navigators who were not check navigators were receiving \$600 a month?

A. That is right.

Q. You got a \$25 differential for those other duties, is that right? A. That is correct.

Q. Then after a year of operating as Check Navigator you became a Non-Pilot Navigator again, is that correct? A. That is correct.

Q. From the time you went back to Navigator—that meant you went back to Navigator aboard aircraft in actual flight? A. True.

Q. During the time you were Check Navigator

(Testimony of John Anderson Hrutky.)

where did you operate from? Where was your base?      A. San Francisco.

Q. During the time both before and after you were Check Navigator, while you were a navigator aboard aircraft in flight, what routes did you fly?

A. Substantially the same as we flew as regular navigators. Well, it was throughout the Pacific Division. [105]

Q. From San Francisco to points in the Pacific?

A. Yes.

Q. This of course, was, partly anyway, during war time?      A. That is true.

Q. Then finally you terminated—your employment was terminated in November, 1948?

A. Yes.

Q. At that time you too, I take it, were the recipient of the telegram such as has already been introduced in evidence as Plaintiffs' Exhibit 3?

A. That is true. I received one just like that.

Q. Thereafter did you make a written request of the company that pursuant to the earlier memoranda which are in evidence, the earlier agreements, you be restored to duty in the Communications Department?      A. I did.

Q. I show you carbon copy of a letter from you to the Division Communications Superintendent dated December 4, 1948, and ask you if you sent the original of that to the Company?      A. I did.

Mr. Leonard: May I have this marked in evidence, if Your Honor please?

(Testimony of John Anderson Hrutky.)

The Court: It may be admitted and marked.

(Thereupon the letter above referred to, dated December 4, 1948, Hrutky to Division Communications Superintendent, was [106] admitted into evidence and marked Plaintiff's Exhibit 6.)

\* \* \*

Q. Thereafter, did you receive an answer from Mr. Axe, the Communications Manager, to your request? A. That is correct.

Q. This letter I handed you is the answer?

A. Yes.

Mr. Leonard: We offer the original of Mr. Axe's reply under date of December 6, 1948.

The Court: It may be admitted and marked.

(Thereupon the letter above referred to dated December 6, 1948, Axe to Hrutky, was admitted into evidence as Plaintiffs' Exhibit 7.)

\* \* \*

Q. Since November 15, 1948, when you were terminated, Mr. Hrutky, have you sought employment? A. Yes.

Q. In what fields have you sought employment?

A. First as a navigator, particularly with Trans-Ocean Airline, and I heard of—talked with some of my friends what results [107] they had with another airline.

Q. Did you make any application to any airlines for employment? A. Trans-Ocean.



(Testimony of John Anderson Hrutky.)

Q. That is an airline? A. That is right.

Q. Were you able to get a job with them?

A. No. Things were described as being very slow at that time.

Q. Did you make any effort to get employment as a marine radio operator?

A. Yes. I attempted to go back to sea.

Q. Did you succeed?

A. Well, this year, I did, yes.

Q. You have been able finally to get employment as a marine radio operator, is that right?

A. Well, not exactly a marine radio operator.

The Court: Tell us about it.

A. I just came back from a trip on a tuna boat, a tuna fishing boat, as radio operator, navigator and fisherman. I have been gone approximately three months on that.

Q. (By Mr. Leonard): When did you first obtain that employment?

A. January of this year.

Q. Were you able to obtain any employment between November 15, 1948, and January of this year? A. No. [108]

Q. You sought such employment and were unable to obtain it? A. That is right.

Q. In January of this year you obtained a combination job as fisherman, radio-man aboard a tuna boat and have finished the first trip?

A. Right.

Q. How long were you aboard that vessel?

(Testimony of John Anderson Hrutky.)

A. Since January 18th until April 19th, of this month.

Q. Just about three months?

A. Just about three months.

Q. What were your earnings in that period?

A. Well, I don't know if I can tell. I haven't been paid for that trip yet.

The Court: Well, what is your best thought on the subject?

A. Well, starting in on a share basis like that, I started out as a quarter-share man and on subsequent trips I should be raised gradually until reaching full pay status.

The Court: How many aboard the ship?

A. There is a crew of fourteen.

The Court: How did you get in on a quarter?

A. I don't understand you, sir.

The Court: You say you get a quarter?

A. Oh, quarter share.

The Court: Share?

A. That is right.

The Court: And the other men are on salary?

A. No, no one on board is paid a salary. You are on a share basis.

The Court: Percentage basis?

A. That is right, of the catch.

The Court: Of course you discussed it on the boat there? You know what you got, don't you?

A. Yes, we have an idea but, well, I think this trip a full share man would net approximately \$2,000.

(Testimony of John Anderson Hrutky.)

The Court: Do you get one-fourth of that?

A. That is right.

The Court: Well, that was a wonderful new experience.

A. Well——

The Court: Where would the tuna fish go, what territory?

A. We went down the coast of Central America to Panama, off the coast of South America, northern South America, anywhere from 50 to 250 miles offshore all the way up and down Central America.

The Court: Is that catch left in the boat until you come back?

A. No, they are in brine cells. Ammonia circulates through a cooling system of pipes and it freezes them.

The Court: How many tuna did you catch?

A. About 225.

Q. (By Mr. Leonard): So as you sit here, as near as you now estimate, Mr. Hrutky, for your three months' work on that tuna [110] vessel you will get about \$500, is that right?

A. Well, that is the way it looks now.

Q. It isn't definitely decided, but as near as you can figure your portion of the pay it will be about \$500?

A. That is right.

Q. Mr. Hrutky, directing your attention to the Defendant's Exhibit M, for identification, which appears to be some kind of Flight Radio Officers Seniority List——

A. Yes.

(Testimony of John Anderson Hrutky.)

Q. —I ask you to look at it and tell me if you have ever seen it before?

A. I can't say that I have.

Mr. Leonard: May we, Mr. Athearn, on the same conditions as before, so the Court will have the visual picture on it concerning Mr. Hrutky, insert Mr. Hrutky's name on this based as to date of his hire?

Mr. Athearn: You are inserting him on the assumption he had been on the active list, and, in other words, acting as a Flight Radio Officer on November 19, 1946?

Mr. Leonard: Yes, I am inserting him——

The Court: No necessity for marking those various documents. Let the record speak for itself.

Mr. Leonard: All right, if Your Honor please. I simply thought it would be easier to get a visual picture of it, that is all. [111]

Q. (By Mr. Leonard): Mr. Hrutky, showing you Defendant's Exhibit M, for identification, and bearing in mind the stipulation you were first employed by the Company as Assistant Radio Operator on July 16, 1937, will you state after whose name or between which two names your name would appear on this list, or what the number would be?

Mr. Athearn: This is confusing. I submit that this witness has testified on November 16, 1946, he wasn't working as a Flight Radio Officer; hence, he would not come within the terms of the list, ever have been put on the active list. He would be on Group B. So I think the witness should indicate on Group B, the inactive list, how much seniority he

(Testimony of John Anderson Hrutky.)

would have retained but not accrue as of that time. This is an imaginary person who is being retained on the list now.

The Court: On the classification as he suggests here he wouldn't be on that list. If he was on the list, he would be under Classification B?

Mr. Leonard: That is their theory of it. I have no objection to counsel having Mr. Hrutky indicate where he should be on Classification B on his theory. What I am trying to do is put in where they would be on this list under our theory, and I take it that at the conclusion of the case each side will argue to Your Honor with respect to our theories.

Mr. Athearn: These are personal theories to be argued back and forth, if it were not for the precise terms of the [112] contract. The contract says clearly on page 19, Number 5, men who were not working as Flight Radio Officers but otherwise employed with the Company were to be given an amount of seniority which they would retain but not accrue. For this witness now to write his name in in some other place on the list would be not to follow Mr. Leonard's theory of the case, but to contradict the terms of the contract.

Mr. Leonard: On the contrary, the case consists of a contract made by the Company on two separate occasions to this man saying, "When your duty as a Navigator is completed we will return you to the Communications Department in a position commensurate with your length of service," and "commensurate with your length of service" would be



(Testimony of John Anderson Hrutky.)

putting him here where he belongs. That is the contract that was made with them. If they return—I mean, if the Company returned them to a position commensurate with length of service, that would bring him on the list in a position commensurate with the length of service as far as the employee is concerned.

The Court: I will give you a record on it and you may develop the record.

Mr. Leonard: I am simply trying to indicate where he would go if the contract was carried out.

Q. Now, Mr. Hrutky——

A. Right in there somewhere. (Indicating.)

Mr. Leonard: Well, as a matter of fact, exactly as the [113] witness points out, it is on the same date. Number 19 on List 1, M. W. Eldred, 7/16/37.

Q. (By Mr. Leonard): That is exactly the same date as you were employed? A. Yes.

Q. I take it from that, Mr. Hrutky, so far as you know, you and Mr. Eldred were first employed as Flight Radio Officers, by the Company on the same date? A. That is true.

The Court: Did you go on together?

A. No, sir, I don't know the gentleman.

Q. (By Mr. Leonard): You transferred to Navigation, as you testified here? A. Right.

Q. Mr. Eldred apparently did not?

A. Apparently not.

Q. Mr. Eldred, on the Seniority List back in 1940, appears as Number 19 on the List.

A. Right.

(Testimony of John Anderson Hrutky.)

Q. If you hadn't transferred to Navigation, presumably you would be right up there with Mr. Eldred?      A. That is right. [114]

\* \* \*

Friday, April 28, 1950

Mr. Leonard: If Your Honor please, I have some matters I would like to question Mr. Hrutky about before I turn him over for cross-examination.

In the first place, if Your Honor please, before we recessed last night we closed the record with reference with my request to insert Mr. Hrutky's name on this Exhibit M for identification, the Seniority List. We had already done it with Mr. Charman, and at this time I renew my request because I think the record would be more complete if it indicated on the face of the document, as with Mr. Charman, where we think the other plaintiffs should be. Simply for the purpose of completing the record, I ask the Court's permission to proceed the same way with Mr. Hrutky.

The Court: As far as the Court is concerned, I am concerned about marking others' papers, unless they join with you and consent to it.

Mr. Athearn: Your Honor, we will. The document has no inherent value, only historic value. But if these names are going to be inserted on the active list contrary to the terms of the list, then they should also be—it is Mr. Leonard's contention that is where they should be. I think the same insertion should be in the names on the inactive list, where

we contend the document says they should be. I see no purpose [115] in writing in the names, frankly, because I don't think there is any doubt that if these gentlemen were on the list where Mr. Leonard says they should be, they would all at the time, November 15th, 1948, have been on the Working List. If they are where we say they should be, they would all have been off the Working List, so what purpose is served in inserting them?

Mr. Leonard: I thought it would make the record clear. I have no objection if Mr. Athearn wants to insert on the other list where he thinks the names should be. I thought it would be easier for this Court and possibly the Appellate Court.

The Court: It is clear to me, but if this case goes forward very often there is misunderstanding in relation to documents that are in evidence. I will give you a record on whatever you want, but in relation to marking up your opponent's documents, unless he consents to it I will deny the request.

Mr. Leonard: If Your Honor please, I don't want to labor the point, but I think for the sake of the record I should say, Mr. Athearn did provide me with the first two pages of this document, and I would be perfectly willing to substitute that for the original if that would serve the same purpose.

Mr. Athearn: I am not concerned about marking up the original.

The Court: I think it would be better to make your record [116] here but not mark the document.

Mr. Leonard: Very well.

## JOHN ANDERSON HRUTKY

a plaintiff herein, resumed the stand, previously sworn.

Direct Examination  
(Continued)

By Mr. Leonard:

Q. Then for the record let me ask you, Mr. Hrutky, your original date of employment was 7/16/37? A. Yes.

Q. That would put you on this list in the same position that a Mr. Eldred, who is number 19 on this list? A. That is right.

Q. According to the records Mr. Eldred and you were both hired in the Communications Department on the same day as Radio Operators?

A. That is true.

Q. And you transferred over to the Navigation Department under the circumstances we have here outlined? A. True.

Q. Therewith we find you are not on the list, but we find Mr. Eldred is, or was in 1946, Number 19 on the list? A. Right.

Mr. Leonard: If Your Honor please, counsel is apparently prepared to stipulate with me during Mr. Hrutky's employment as a member of the Company he had 1,968.19 hours as a Flight [117] Radio Officer and 4,886.15 hours as a Non-Pilot Navigator, or a total number of flight hours of 6,854.34.

Mr. Athearn: I will stipulate those are the facts, but I am wondering what all this has to do with the case. If it has any purpose I will be happy to let

(Testimony of John Anderson Hrutky.)

it in, but I think we have gone far afield. It doesn't matter where they were working or how many hours they flew. It is a question of what their rights are.

Mr. Leonard: Your Honor please, I think the Court would want to know how many hours he spent as a Non-Pilot Navigator and how many hours he spent as a Flight Radio Officer. I direct attention to the vast amount of collective bargaining contracts, and so on, which counsel has had marked for identification, which presumably he means to submit in evidence as bearing on the question whether or not these men have a right to rely on promises that the company made to them some five or six years before the contracts were entered into.

The Court: In any event, what relation has this subject matter to anything we are dealing with now, to any issue in this case?

Mr. Leonard: I think it shows the background of these men, shows the large number of hours they were engaged as Flight Radio Officers and the large number of hours they were engaged as Navigators, and I thought it would be important information for the Court to have.

The Court: The information serves no purpose that I am [118] aware of at this time, unless you indicate it to me.

Mr. Leonard: It was the obligation of the company under those two contracts of 1941 and 1943 to reinstate those men in the Communications Depart-



(Testimony of John Anderson Hrutky.)

ment. The Court might desire to know whether the men were qualified to be reinstated, and I think this evidence indicates they were so qualified.

The Court: Qualification may have something to do with it. I think it is purely a matter of classification.

Mr. Leonard: Very well, Your Honor.

The Court: So far as I am aware at the present time, at least.

Mr. Leonard: If counsel will stipulate for the record that the statement I made stand as an offer of proof with respect to Mr. Hrutky?

The Court: For what purpose?

Mr. Leonard: Offer of proof that he had the hours as stated.

Mr. Athearn: We will object to it as irrelevant.

The Court: Objection sustained.

Mr. Leonard: On my record, Your Honor, since Mr. Charman has gone, may I, based on Mr. Fisher's memorandum to Mr. Charman, make an offer of proof concerning his hours as well? I offer to prove that during Mr. Charman's employment as a Flight Radio Officer he had 1,356.01 hours as Flight Radio Officer, and 4,595.33 hours as Non-Pilot Navigator, or a total number of [119] flight hours of 5,951.34 hours.

Mr. Athearn: We object to the offer as being irrelevant.

The Court: Objection sustained.

Q. (By Mr. Leonard): Mr. Hrutky, I direct

(Testimony of John Anderson Hrutky.)

your attention to paragraph 15 of the complaint wherein damages in the sum of \$10,000 are requested on your behalf to compensate you for loss of certain benefits and privileges therein enumerated. Will you state what the benefits of the company's retirement plan are, what the retirement is, and what benefits——

A. I don't exactly know what they are, but I think that they are approximately two-thirds or three-fourths of our salary. After we retire we receive that amount.

The Court: Over a certain period of time?

A. True.

Q. (By Mr. Leonard): Do you know what the period of time is?

A. We had the opportunity of retirement at age 50. Normally at age 60 for flight personnel, 65 for ground personnel, and I think that is a reasonable value for insurance of that sort.

Q. Of course it is for the Court to determine. It is your understanding that after having been with the company for a period of time and having reached retirement age under the plan, the employee could retire at some fraction, around two-thirds or three-fourths of his full salary?

A. True.

Q. And if his salary was in the vicinity of \$600 a month, why, [120] his retirement would be \$400 or \$450 each month?

A. That is right.

(Testimony of John Anderson Hrutky.)

Q. That would be for the balance of his life, is that right?      A. That is right.

Q. If you had been reinstated in Communications and had qualified under the Retirement Plan, why, you would have had the privilege of so retiring and receiving that sum of money?

A. Right.

Q. The paragraph to which I directed your attention is based, among other things, upon the benefits of that retirement plan, is that right?

A. True.

Mr. Leonard: That is all.

The Court: Tell me, what are you doing at the present time?

A. I am on that tuna fishing boat, sir.

The Court: Oh, that is right. Are you going back on another trip?

A. Yes, I am. I am supposed to leave the first of the week.

#### Cross-Examination

By Mr. Athearn:

Q. Mr. Hrutky, referring to the document which has been designated as Defendant's Exhibit O, which is the memorandum I believe you said you wrote on November 12, 1940, while you were stationed at Canton Island——      A. Yes. [121]

Q. ——in which you said you had heard by rumors that the "Company is considering the possibility of employing several Flight Radio Officers as Navigators." I take it from the tone of that you were rather anxious to get the assignment, weren't you?

(Testimony of John Anderson Hrutky.)

A. Naturally. It meant, we hoped, more money and our bettering ourselves.

Q. It did mean more money, didn't it?

A. We didn't know exactly whether it would or not but hoped it would.

Q. When you wrote this you didn't even know how much more money would be involved?

A. True.

Q. You were very anxious to get the assignment even though you didn't know the terms, for sure?

A. Roger.

Q. Roger means yes?                      A. Affirmative.

Q. It is a radio term?                      A. Yes.

The Court: A radio term?

A. Yes, sir.

The Court: Well, believe it or not, that is the first time I ever heard it.

Mr. Athearn. That is why I thought the record better [122] show it.

Q. As I understand, you were on Canton Island when you wrote this memorandum, were you?

A. Right.

Q. Had anyone representing the Company formally approached you about accepting this assignment?                      A. Not that I recall.

Q. In that letter you said you heard by the "grapevine." What did you mean by that?

A. Evidently some flight personnel passing through informed me of the situation.

The Court: I take it there was a "bull session," probably, out on the island, and you found an oppor-

(Testimony of John Anderson Hrutky.)

tunity or hoped for an opportunity?

A. That is true.

Q. (By Mr. Athearn): Then as I understand it, it was after you got back to the mainland you were actually assigned to the navigational training course.

A. That is right.

Q. And you accepted that assignment when it was offered to you?

A. Yes.

Q. Did you inquire then about what the terms would be?

A. Well, I don't exactly remember how the situation developed except that I understood that we would get an increase of salary of \$25 a month for our additional duties and responsibilities [123] as a Navigator, and also at the same time that I transferred, I received a letter from my department head, which you have there.

The Court: Approximately what date was that?

Mr. Athearn: I believe the letter's date is slightly before the transfer date, your Honor.

The Court: He gave me the year. I have in mind the war situation.

Mr. Athearn: January 21st, 1941, and about a week after that he was transferred to Navigation, is that right?

A. That is right. About a year before the war started.

Mr. Athearn: Mr. Leonard, we might in the interest of time—do you want to stipulate—I know you object to the relevancy, but how about the facts of this and the other plaintiffs being members of the



(Testimony of John Anderson Hrutky.)

Navigators Association and signing the authorization cards?

Mr. Leonard: We do object to the relevancy, as I said when questions were put to Mr. Charman yesterday. I believe it is the fact, and if it is the fact I will stipulate to the facts, reserving our objection as to materiality. That is the fact, you were a member of the Navigators Association and signed the authorization card, is that correct A. Yes.

Mr. Leonard: We will stipulate.

Mr. Athearn: How about the others? [124]

Mr. Leonard: That is correct.

Mr. Athearn: Then as I understand it, it is stipulated that all the plaintiffs after being given jobs as Non-Pilot Navigators, on or about October 27, 1944, joined the Pan American Airways Navigators Association?

Mr. Leonard: Is that the approximate date? So stipulated.

Mr. Athearn: Thereafter when the Navigators Association affiliated with the Transport Workers, CIO, they became members of that organization?

Mr. Leonard: So stipulated.

Mr. Athearn: And that on or about October 27, 1944 each of them signed an authorization card in the same form that the plaintiff Charman said he signed it?

A. True.

Mr. Leonard: So stipulated. Those stipulations are all entered into subject to objection as to relevancy and materiality.

(Testimony of John Anderson Hrutky.)

Mr. Athearn: Now will you stipulate, subject to the same objection, that the plaintiffs were all aware that on or about January 4, 1945, the Pan American Airways Navigators Association executed an agreement with the defendant governing wages, hours, working conditions, seniority and reinstatement rights of Navigators?

Mr. Leonard: I don't know if they were or not.

The Court: You might ask. [125]

Mr. Leonard: I can't stipulate because I don't know.

A. I am not too sure about the exact dates.

The Court. But otherwise?

Q. (By Mr. Athearn): You were aware an agreement was signed between the Company and the Pan American Airways Navigators Association?

Mr. Leonard: May I have the same objection to this line of inquiry?

The Court: Let the record so show. Objection overruled.

A. Generally, yes.

Q. (By Mr. Athearn): And did you ever do anything to repudiate or disclaim that agreement?

A. With the Navigators Association? No.

Mr. Athearn: Mr. Leonard, will it be stipulated—I think the pre-trial order says it, anyway,—that none of the plaintiffs ever filed a protest with the FRO Seniority Board regarding the omission of their names from the Seniority List, Defendant's Exhibit M for identification?

Mr. Leonard: I think that the pre-trial order

(Testimony of John Anderson Hrutky.)

does so state, and we are prepared to stipulate that is the fact. I think, though, in fairness to the plaintiff, the fact developed through the witness Charman on the stand developed that he was never advised of such omission and had no occasion to file a protest.

Mr. Athearn: I will go into that.

The Court: Stipulated that they didn't file a protest? [126]

Mr. Athearn: Yes.

The Court: Any of them?

Mr. Leonard: That is correct.

The Court: What did you want to say?

A. How could we file a protest if we didn't know that we were omitted from the list?

The Court: Well, whether you did or not we want to get the record on it.

A. I see.

Mr. Athearn: Let's go into that now.

Q. Do you know Mr. Poindexter?

A. Yes, sir.

Q. Do you know where the Flight Radio Officers' room was at Pan American Airways during the latter part of 1946 and the early part of 1947?

A. That is when we were at Mills Field. Yes.

Q. You knew that room? A. Yes.

Q. Mr. Poindexter's desk is in there, isn't it?

A. I believe so.

Q. Did you ever go in that room during the latter part of 1946 and early part of 1947?

A. I have no memory of any particular date, but undoubtedly I did.

(Testimony of John Anderson Hrutky.)

Q. You did go into that room on occasion, I take it? [127]           A. Yes.

Q. For what purpose?

A. Oh, bull sessions.

Q. For friendly conversations?

The Court: I am afraid I brought that on. I brought in that word "bull session,"

Q. (By Mr. Athearn): Did you ever notice a bulletin board in the Flight Radio Officers' room?

A. Well, I may or may not have. I might have, in other words, but there is nothing directly concerning me in the office except Mr. Poindexter's friendship.

Q. You wouldn't say that there wasn't a bulletin board in there?           A. No, I couldn't say that.

Q. You don't know whether there was one there or not?           A. No.

Q. Did you ever have any interviews with Mr. Maxwell regarding assignment to the job as a Non-Pilot Navigator?

A. Well, in a hazy sort of way, yes.

Q. I realize it was some time ago, but can you fix the date in any way?

The Court: Approximately, as near as you can.

A. Well, somewhere around 1936 or 1937 is about as close as I can go.

Q. (By Mr. Athearn): 1936 or '46? [128]

A. 1946,

Q. 1946?           A. That is right.

Q. That was with Mr. Maxwell, did you say?

(Testimony of John Anderson Hrutky.)

A. No, with a Mr. Campbell was the man I talked to at the time.

Q. What was Mr. Campbell's position at the time?      A. Chief Pilot.

Q. And can you recall generally what was said?

A. Oh, there was some discussion going on to the effect that perhaps one day the professional navigators as such would be discontinued and would we like to transfer to another department.

Q. That was what Mr. Campbell said to you, is that?      A. Yes.

Q. And what did you say to that?

A. Well, I told him I would like to get back in the Communications Department.

Q. Then what happened?

A. That is about all. That is about the last I heard of it.

Q. Did you ever formally apply for a job in the Communications Department after that interview and until November of 1948?

A. No, but I thought it was pretty well understood that that is what would happen, I would revert to the Communications Department upon my termination in the Operations Department.

Q. But you didn't formally request such a transfer? [129]      A. No.

Q. Now, you have a brother by the name of Theodore Hrutky, do you not?

A. That is right.

Q. Do you know about what time he went to work for Pan American Airways, what year?



(Testimony of John Anderson Hrutky.)

A. 1936.

Q. That was the same year you went to work, wasn't it? A. A year ahead of me.

Q. Oh, he was a year ahead of you, was he, 1936?

A. That is right.

Q. You came in 1937? A. That is right.

Q. What kind of a job did he have with the Company?

Mr. Leonard. This is objected to on the ground it is incompetent, irrelevant and immaterial.

Mr. Athearn: Your Honor, they raised the question of this gentleman yesterday, and we are going to show a parallel instance. I am going to show it isn't parallel.

The Court: Objection overruled. Proceed.

Q. (By Mr. Athearn): What kind of job did he have when he went on?

A. I believe he started as apprentice operator.

Q. He later worked up to Flight Radio Operator? A. Yes. [130]

Q. And had about the same kind of job that you did in 1941?

A. No, in 1941 I was Navigator and he was still in Communications.

Q. Did he later become a Navigator?

A. I believe so.

Q. Both of you were Flight Radio Officers, and then you became a Navigator and then he became a Navigator, is that right.

A. That is right.

(Testimony of John Anderson Hrutky.)

Q. He went to work first, I think you said, in 1936?      A. Right.

Q. Then——

The Court: How did you get ahead of him?

A. He got ahead of me, sir. I mean, he started before I did.

The Court: In 1936 and you started in 1937?

A. That is right.

The Court: But you went into Navigation first?

A. Yes.

Q. (By Mr. Athearn): I will direct your attention to page 3 of Defendant's Exhibit M, for identification, and particularly to line No. 68 where it reads "Hrutky, T. M.," and under the column "Seniority Date," "3/29/40." Is that your brother?

A. Yes, but the date is in error.

Q. I see. In other words, March 29, 1940, is not the date he went to work for the Company?

A. Oh, no, [131]

Q. Do you know whether he was working as a Navigator on November 19, 1946?

A. 1946? November? I think he went up to Seattle in the spring of 1946.

Q. He had gone back to work as a Flight Radio Officer in 1946, hadn't he?      A. Yes.

Q. In other words, when this exhibit came out he was back on the Active List because he was then an FRO, isn't that right?

Mr. Leonard: Just a minute, that calls for the witness's conclusion and opinion.

The Court: If he knows he may answer.

(Testimony of John Anderson Hrutky.)

Q. (By Mr. Athearn): Do you know if he was then an FRO? A. What time?

Q. November 19, 1946?

A. Well, I believe he said he was at that time, yes.

Mr. Leonard: There must be better evidence than this, Mr. Athearn.

Mr. Athearn: We will. I just wanted to make sure that the plaintiff knows it, counsel.

Q. You don't know how that date March 29, 1940, got written after his name there, do you?

A. Looks wrong to me. If he started a year ahead of me he couldn't be in 1940.

Q. Yes, he would be way up here, maybe 10th or 11th on the [132] List, rather than 67th on the List, wouldn't he? A. That is right.

Mr. Leonard: That is argumentative, if Your Honor please.

Mr. Athearn: I won't follow it any further. I will follow it up later.

Q. I believe you stated that during the year 1949 you did not have any income? A. Right.

Q. You didn't have any job? A. No.

\* \* \*

The Court: Did you earn anything during that period at all?

A. No.

Q. (By Mr. Athearn): You were building a house for yourself during that year, weren't you?

A. A few months, yes.

(Testimony of John Anderson Hrutky.)

Q. During the time you were building a house, you weren't [133] looking for a job, were you?

A. Well, I was waiting to be called.

The Court: Where were you building a house?

A. In Oakland, sir.

The Court: Whereabouts?

A. On Michigan Avenue.

The Court: How many rooms?

A. Five.

The Court: Did you build it all yourself?

A. Yes, sir.

The Court: Indicates you are industrious, that is all. Did you ever have anyone helping you?

A. No, sir.

The Court: What were you doing with the house?

A. It is still sitting there waiting to be completed. I haven't had time or funds to complete it.

Q. (By Mr. Athearn): We have a document here that has been marked Defendant's Exhibit I for identification, and there are four letters, each dated March 4, 1949—no, the one is dated March 3, 1949. I ask you whether that is a copy of the letter you received? A. Yes.

Q. That is a letter signed by Delvin E. Axe, Communications Superintendent? A. Right.

Q. In the letter he states, "In the event you are still interested in a position in our Communications Department, we request that you call at this office for discussion of these openings." Did you ever call in in response to that letter? A. Yes.

(Testimony of John Anderson Hrutky.)

Q. What happened at the interview?

A. Well, in the interview the position was described as being temporary, a salary of approximately \$300 a month, and I declined to accept the offer because it wasn't anything what we had been led to expect we would get.

Q. What kind of job was it? What was it doing?

A. Radio operating.

Q. It was a ground radio operator's job?

A. Right.

Q. Located where?

A. In Los Angeles, I believe.

Q. You had been a ground radio operator when you first went to work for the Company, had you not? A. True.

Q. You declined this offer of a job?

A. Well, just simply on account of principle, not necessarily because of that particular job.

Q. As a matter of principle you would rather earn nothing than take this job, is that right?

A. Not necessarily. [135]

Mr. Leonard: Objected to on the ground it is argumentative.

The Court: What did you mean when you said you wouldn't accept it on account of the principle involved?

A. I meant that according to our contract with the Company we were informed that we would be reinstated without any loss in any of our privileges which we had earned, and I felt that having our salary chopped in half and having no security what-



(Testimony of John Anderson Hrutky.)

soever or any sort of seniority list, temporary job, wasn't anything near what we had expected.

The Court: It wasn't attractive to you at that time?      A. That is right.

The Court: All right, proceed.

Q. (By Mr. Athearn): \$300 a month was more than you were receiving when you left the Communications Department, was it not?

A. I am not sure.

Q. Isn't it a fact you were getting about \$250 at most, then?      A. Possibly. I am not sure.

Q. So this was a better job than you left in Communications, was it not?

A. Well, at that time \$250 a month was worth more than \$300 a month now.

Q. And you did not——

A. So that is debatable. [136]

Q. You did not desire to mitigate the damages, reduce the damages you were suffering from lack of a job by taking a \$300 a month job, is that it?

A. Well—well, we thought that by accepting—rather, I thought by accepting such a job that I would in fact wash my hands of any contract that I had with the Company before.

The Court: What is the date of that?

Mr. Athearn: March 3rd, 1949.

Q. 1949, was the year you earned no money at all?      A. Right. Yes.

Q. Did you ever apply for another job with another airline after November, 1948?

A. Trans-Ocean.

(Testimony of John Anderson Hrutky.)

Q. Did you ever apply for a job with the Flying Tigers airline? A. No, not during 1949.

Q. Did you ever apply with the Flying Tigers at any time after November 15, 1948, until now?

A. Flying Tigers? No.

Q. Did anyone ever tell you there was a job available there for you? A. Yes.

Q. Who did that?

A. Mr. Poindexter called me one day and said that perhaps I might be interested in something that was coming up. Well, it entailed leaving the United States for a period of a year, and [137] it looked like a pretty good proposition except it was temporary. I mean, I couldn't look forward to more than a year's employment at most.

Q. Mr. Poindexter? Who is he?

A. Well, he was Chief Flight Radio Officer, I believe, for Pan American.

Q. For Pan American Airways, the defendant, is that right? A. Yes.

Q. Can you tell me when he called you, approximately?

A. I think it was in January of this year.

Q. January of 1950? A. Right.

Q. And he told you there might be a job available with the Flying Tigers?

A. Yes, but at the same time I told him that I had already lined up the job which I presently hold.

Q. So you never applied to the Flying Tigers?

A. Right.

(Testimony of John Anderson Hrutky.)

The Court: Anything said about compensation with the Flying Tigers?

A. The matter was brought up how he thought that I should be able to earn approximately \$800 a month.

The Court: What is that?

A. \$800 a month.

The Court: Foreign mission, or something of the kind? [138]

A. Yes, sir. It would evidently be based in Europe somewhere, and I understand there is a Holy Year in progress, and I believe the Flying Tigers had some sort of contract to fly pilgrims into the Holy Land.

The Court: I see. All right.

Q. (By Mr. Athearn): Now, this job that you mentioned on the tuna boat, you took that in January of this year?

A. Right.

Q. That was on the basis of a quarter share, I believe you said.

A. Right.

Q. I believe you said that on this most recent three months' voyage a full share man would get about \$2,000, you estimate?

A. That is right, with 225 tons of fish it would net about \$2,000 per full share man.

Q. And you hope sometime to be a full share man, don't you?

A. Right.

Q. How long do you think that will take you?

A. Well, could take a year, but I hope it will be sooner.

Q. And a full share man earns from this par-

(Testimony of John Anderson Hrutky.)

ticular voyage approximately \$2,000 over and above his room and board, does he not?      A. Right.

Q. He comes back to port with \$2,000 clear?

A. Yes, somewhere around that. [139]

Q. How many voyages can a full share man hope to make during the year?

A. Oh, three or four.

Q. If he made four, he would make \$8,000 over and above room and board, would he not?

A. Right.

The Court: How do you get that status in a year? What happens?

A. I am not sure, exactly, Your Honor, except that your allowance is increased by quarterly share amounts. For instance, you start at a quarter share on the first trip, and then perhaps a second share the second trip, and so forth.

\* \* \*

### Redirect Examination

By Mr. Leonard:

Q. Mr. Hrutky, you were asked whether you had occasion the latter part of 1946 or early part of 1947 ever to be in Mr. Poindexter's office. I want to show you, in that connection, Defendant's Exhibit N for identification, and ask you if you ever saw that document before you saw it in this courtroom yesterday?

Mr. Athearn: We will object to that as being asked and answered. He said on direct examination he had never seen it. [140]

(Testimony of John Anderson Hrutky.)

Mr. Leonard: Oh, all right, if the record so shows I am satisfied.

Q. During the latter part of 1946 and early part of 1947 where was Mr. Poindexter's office located?

A. I believe it was in the Terminal Building.

Q. And where were the Navigators' quarters located at that time?

A. Oh, in the Administration Building.

Q. Those are separate and distinct buildings, are they? A. Yes.

Q. You were in the Navigators group at that time, of course? A. That is right.

Q. Your duties took you into the Navigators quarters? A. That is right.

Q. You might, for a social chat, drop into Mr. Poindexter's? A. Right.

Q. Because you had known him from the time you were in the Communications Group?

A. Right.

Q. Did Mr. Poindexter ever call your attention to that Seniority List? A. No.

Q. Any time you were in his office he didn't say, "Take a look at the bulletin board, there is something there that might interest you?" [141]

A. No.

Q. Or might concern you? A. No.

Q. He never said that? How about the interview with Mr. Campbell about which you just testified?

\* \* \*

Q. (By Mr. Leonard): After your interview



(Testimony of John Anderson Hrutky.)

with them did Mr. Campbell or any other official of the Company ever formally offer you a transfer or assignment back to Communications?      A. No.

Q. It was just a loose kind of discussion about sometime the navigation function would be terminated and you indicated you would like to go back in Communications?      A. Yes.

Q. Did he ever tell you when that happened you could go back into Communications?      A. No.

Q. Did he suggest to you you couldn't go back into Communications?      A. No. [142]

\* \* \*

Q. Did he suggest to you when the navigation function was terminated you would be severed from the Company?      A. No.

Q. You never formally received an order or direction from the Company that you would be transferred over?      A. No.

Q. Or request that you go over?      A. No.

Q. What does your family consist of, Mr. Hrutky?      A. A wife and three children.

Q. Counsel showed you a letter from Mr. Axe to you dated March 3, 1949, and you say as a result of the receipt of that letter you did go to see Mr. Axe and have an interview with him about the projected job, is that right?      A. Yes.

Q. At the time you transferred out of the Communications Department and into the Navigation in 1941, were you engaged in ground communications or in flight communications?

(Testimony of John Anderson Hrutky.)

A. I had just finished a tour of duty on Canton Island and would normally go right back on as Flight Radio Officer.

Mr. Athearn: I object, that isn't an answer to the question. The question was, what were you doing in 1941?

Mr. Leonard: He said he was engaged in a tour on Canton Island.

A. I was Flight Radio Officer temporarily assigned to ground duty. [143]

Q. (By Mr. Leonard): The job Mr. Axe proposed at the time of this interview which you had in March, 1949, was that a job as a Flight Radio Officer? A. No.

Q. In 1941 at the time you transferred over, were you stationed, based, in San Francisco or in Los Angeles? A. San Francisco.

Q. Was your home in San Francisco or in the Bay Area, at least? A. Right.

Q. Was the same situation true in 1949 when you saw Mr. Axe, your home was here in the Bay Area? A. Yes.

Q. The job he was talking about, was that a job in San Francisco or Los Angeles.

A. In Los Angeles.

Q. In 1941, your job as Flight Radio Officer, was that temporary or permanent assignment with the Company? A. Permanent assignment.

Q. Was this job Mr. Axe offered you a permanent job or temporary job? A. Temporary.

(Testimony of John Anderson Hrutky.)

Q. Was there any indication what would happen after that temporary job was completed?

The Court: His testimony was it was only a temporary job for a year. That is the ultimate fact.

Mr. Leonard: All right.

Q. After you had this interview with Mr. Axe—this, incidentally, was after the complaint in this case had been filed, isn't that right?—you received a letter from Mr. Axe to interview him?

A. Yes.

Q. Then did you come to my office and discuss it with me?           A. Yes.

Q. Then as a result of that discussion, do you remember I prepared a letter which we sent to the Company?           A. Right.

Q. That document has been marked Defendant's Exhibit K for identification, and does that document state the reasons why you felt you were unable to accept the proposed job that Mr. Axe was discussing?

The Court: If you prepared it, we will assume everything has been taken care of.

Mr. Leonard: Thank you very much, Your Honor. I tried not to overlook anything.

Q. With respect to the conversation you had with Mr. Poindexter in January, 1950, in which he talked to you about a job with the Flying Tigers, that organization wasn't with Pan American Airways?

A. No.

Q. It was with another company, that is, as you

(Testimony of John Anderson Hrutky.)

told us, not [145] based in San Francisco but based in Europe?           A. Right.

Q. Furthermore, if you took that job with the Flying Tigers, would you have had seniority and retirement benefits which accrue to employees under the Pan American Airways situation?           A. No.

Q. You would have gone into the Flying Tigers as a brand new employee?           A. Yes.

Q. With whatever arrangements they have for seniority and retirement, if they have any?

A. Yes.

Q. Do you know whether they have any?

A. No. [146]

\* \* \*

STANLEY CUMMINGS

a plaintiff herein, called as a witness on his own behalf, sworn.

The Court: State your full name please.

A. Stanley Cummings.

The Court: Where do you live?

A. Carmel.

The Court: Your business or occupation?

A. I also have a launderette like Mr. Charman.

The Court: How long have you been in that business?

A. Approximately a year. Just about a year.

The Court: How many units have you got?

A. Twenty washing machines.

The Court: How is business?

A. Oh, it is picking up.

(Testimony of Stanley Cummings.)

The Court: I can't conceive of anyone down in Carmel doing their own washing.

A. I would like to correct that. I live in Carmel. I have a launderette in Monterey, adjacent town.

The Court: All right, proceed.

### Direct Examination

By Mr. Leonard:

Q. How old are you, Mr. Cummings?

A. Forty-two.

Q. What was your schooling, education?

A. High school.

Q. After high school, what did you do? [147]

A. Started to study radio.

Q. Where? A. In Los Angeles.

Q. How long did you study radio?

A. The first session, approximately a year, to get my first license.

Q. What license was that?

A. That was a second-class radio-telegraph license. Following that I went to sea for a short time. After getting the necessary experience I came back to Los Angeles and took another training course which qualified me to get a first-class radio-telegraph license. I went to sea again. Again after getting experience at sea, I again came ashore to study and got a first-class radio-telephone license.

Q. These courses of study and the sea experience, with respect to that matter, you were in Court yes-



(Testimony of Stanley Cummings.)

terday when Mr. Charman testified generally about the nature of the studies and duties involved?

A. Yes.

Q. What he had to say with respect to experience in that regard applies equally to you, without repeating it in detail?

A. Yes, that is true.

Q. When you finally went to work, did you for Pan American Airways?

A. Well, ultimately. I had another job in the meantime.

Q. What other experience in radio did you have before you [148] went to work for Pan American?

A. As transport radio officer I was employed by Richfield Oil Company, Moore-McCormack Steamship Company, then went to work for TWA Airlines.

Q. So that your first employment as radio man at an airfield was not with Pan American, but you had experience with TWA?

A. That is right.

Q. How long were you employed by TWA?

A. Approximately one year.

Q. Generally, what were your duties there?

A. Ground radio operator maintaining communications on the ground radio circuit by radio-telegraph, and communications with airplanes in flight with radio-telephone.

The Court: When was that?

A. In 1935.

(Testimony of Stanley Cummings.)

The Court. Bring us up to the present time from that time on, for the purpose of the record.

A. I was employed with TWA in Albuquerque, New Mexico, during the latter part of 1935. I heard Pan American Airways was going to inaugurate a new division spanning the Pacific Ocean, and I was very interested in joining that enterprise. I applied for employment and was so employed in December, 1935, with Pan American Airways.

The Court: Go ahead and bring us up to the present date. You were employed in 1935, then what happened? [149]

A. Just right up to the present date?

The Court: Yes.

A. I was employed by Pan American.

Mr. Leonard: I was going to say with counsel's consent we are prepared to enter into a stipulation with regard to the precise dates.

The Court: All right, that is what I was wanting.

Mr. Leonard: I will read what Mr. Athearn is prepared to stipulate with me on, Mr. Cummings, and you say if this is substantially your employment. He was first employed as Assistant Radio Operator on December 30, 1935; reclassified as Flight Radio Officer July 1st, 1938; that you were reclassified as a Non-Pilot Navigator on February 1, 1941; that you were reclassified as an Assistant Chief Navigator on June 15, 1945; that you were reclassified as Check Navigator on March 16, 1947; that you were reclassified as Non-Pilot Navigator

(Testimony of Stanley Cummings.)

on March 23rd, 1948; that you were terminated on November 15, 1948.

Mr. Athearn: We will so stipulate.

A. That is correct.

The Court: The record so shows.

Mr. Leonard: For the record, Your Honor, may I make, consistent with the record up to this time, an offer of proof that during this period of time Mr. Cummings had 4,446 hours as a Non-Pilot Navigator and 2,005.10 hours as Flight Radio [150] Officer, or a total number of flying hours of 6,451.10.

Mr. Athearn: We will repeat our objection to the materiality.

The Court: Objection sustained.

\* \* \*

Q. Mr. Cummings, I believe there is one new classification here that did not appear in either Mr. Charman or Mr. Hrutky's employment history. That is, for the period from June 15, 1945 to March 16, 1947, something short of two years, you were classified as Assistant Chief Navigator.

A. Yes.

Q. Will you tell us what the duties and functions of an [151] Assistant Chief Navigator, are, please.

A. Generally, supervisory, administrative over the Navigators involved in the airline; to assist the Chief Navigator and carrying out his policies; answering correspondence; investigating new types of equipment; in general, see the Chief Navigator's

(Testimony of Stanley Cummings.)

policy is carried out while he was on flight or rest periods or vacation.

Q. With respect to the Pacific-Alaska Division of the Company, which I think we will agree is the only division with which we are concerned here, how many Chief Navigators were there?

Mr. Athearn: We object to that.

Mr. Leonard: I think the Court has a right to know and we have a right to show what the position—what position this man had and where he was.

The Court: You have already established what his position was.

Mr. Leonard: I am simply trying to develop what the functions and duties are. We will show a Chief Navigator is fairly highly placed.

Mr. Athearn: We are ready to stipulate all these men are highly qualified, and we have no objection to their background.

The Court: And what's more, they needn't apologize to anyone. They are outstanding men.

Mr. Leonard: That is right. I don't see why counsel should object to the fact. [152]

The Court: The fact was admitted. There is no necessity of proof.

Mr. Leonard: If counsel presses the objection, all I wanted to show is the fact that this particular man, as distinguished from some of the others, has this one classification of Assistant Chief Navigator, and I wanted Your Honor to know what that meant.

The Court: Are you asking any more for him on that basis than for your other clients?

(Testimony of Stanley Cummings.)

Mr. Leonard: No, Your Honor.

The Court: Then we are ready to proceed.

Mr. Leonard: I will accede to Your Honor's ruling.

The Court: We will all agree you are the best man.

A. Thank you, sir.

Q. (By Mr. Leonard): Mr. Cummings, in connection with your reclassification on February 1st, 1941, to Non-Pilot Navigator, you also received the memorandum of January, 1941, which has been offered in evidence herein? You are familiar with it, the memorandum Mr. Hrutky and Mr. Charman received, that is right, is it not?

A. Yes, I received that.

Q. That is dated about ten days prior to the time you actually were reclassified?

A. That is right.

Q. Then you assumed your navigational duties and functions in [153] the Navigation Department?

A. Yes.

Q. Thereafter, while you were so functioning, you also received the letter, document referred to as Plaintiff's Exhibit 1 for the sake of the record?

A. Yes.

Q. Thereafter, and while you were functioning in the Navigation Department, you were a recipient of this document, Plaintiff's Exhibit 2, dated April 22, 1943?

A. Yes.

Q. After the receipt of that document you con-



(Testimony of Stanley Cummings.)

tinued to function in the Navigation Department?

A. Yes.

Q. And you did so until your termination in November, 1948?

A. Yes.

Q. Did you also receive one of the telegrams of November 8, 1948, facsimile of which has been introduced in evidence herein as Plaintiff's Exhibit 3?

A. That is the original sent to me.

Q. Oh, yes. This has your name on it. Was that the first notice you had that your services with the company were terminated?

A. Yes.

Q. Thereafter, did you also make a written request to the Company asking that you be assigned to the Communications [154] Department?

A. Yes, I did.

\* \* \*

Mr. Leonard: If Your Honor please, pursuant to the suggestion made by Your Honor prior to the recess, Mr. Athearn and I have gone over some documents and had them marked for identification. I think we are prepared to stipulate they may be admitted into evidence, subject to objections heretofore made with respect to the materiality of identical document in connection with the other proof, so that, first, I would offer in evidence what has been marked Plaintiff's Exhibit 8 for identification, a communication from the plaintiff Cummings to the Manager of the Communications Department of the Company dated December 2nd, 1948.

(Testimony of Stanley Cummings.)

Mr. Athearn: No objection.

The Court: That may be admitted and marked, next in order. [155]

(Whereupon letter above referred to was admitted into evidence as Plaintiff's Exhibit 8.)

Mr. Leonard: Next I would offer in evidence document marked Plaintiff's Exhibit 9 for identification, which is a letter dated December 6, 1948, to plaintiff Cummings from Mr. Axe, the Manager of the Communications Department of the defendant Company.

Mr. Athearn: No objection.

The Court: It may be admitted and marked next in order.

(Whereupon letter above referred to was admitted into evidence as Plaintiff's Exhibit 9.)

Mr. Athearn: Then, Your Honor, we have a series of exhibits here; Communication with a memorandum dated November 5, 1940, signed by S. Cummings, marked Defendant's Exhibit P for identification. We move its admission.

The Court: Admitted next in order.

(Whereupon communication above referred to was admitted into evidence as Defendant's Exhibit P.)

Mr. Athearn: A memorandum dated November 7, 1940, signed J. F. Schwella, marked Defendant's Exhibit Q for identification.

(Testimony of Stanley Cummings.)

Mr. Leonard: No objection.

The Court: That may be admitted next in order.

(Whereupon memorandum above referred to was admitted into evidence as Defendant's Exhibit Q.)

Mr. Athearn: Next a photostatic copy of a check in the [156] sum of \$2,129.56, payable to Stanley Cummings, marked Defendant's Exhibit R for identification, and we move its admission.

Mr. Leonard: Objected to, if Your Honor please, on the ground it purports to result from an arbitration, and we urge our grounds as to inadmissibility and immateriality with respect to the contract issued between these parties and the defendant.

The Court: Objection overruled. It will be admitted and marked next in order.

(Whereupon photostatic copy of check above referred to was admitted into evidence as Defendant's Exhibit R.)

Mr. Athearn: Next, a photostatic copy of a check in the sum of \$1,923.87, payable to John A. Hrutky, marked Defendant's Exhibit S for identification. We move its admission.

Mr. Leonard: Same objection as to Exhibit R, if Your Honor please.

The Court: Same ruling. It will be admitted and marked, next in order.

(Whereupon photostatic copy of check above referred to was admitted into evidence as Defendant's Exhibit S.)

(Testimony of Stanley Cummings.)

Mr. Athearn: Next, a photostatic copy of a check in the sum of \$204, payable to John A. Hrutky, marked Defendant's Exhibit T for identification. We move its admission.

Mr. Leonard: Same objection.

The Court: Same ruling. It will be admitted and marked. [157]

(Whereupon photostatic copy of check above referred to was admitted into evidence as Defendant's Exhibit T.)

Mr. Athearn: Finally, a photostatic copy of a check in the sum of \$2,176, payable to J. F. Schwella, marked Defendant's Exhibit U for identification. We move its admission.

Mr. Leonard: Same objection.

The Court: Same ruling. It will be admitted and marked.

(Whereupon photostatic copy of check above referred to was admitted into evidence as Defendant's Exhibit U.)

Q. (By Mr. Leonard): Now, Mr. Cummings, since November 15, 1948, have you made any effort to secure employment?

A. Yes, I have.

Q. Will you tell the Court what efforts you have made and with what success?

A. I corresponded with TWA Airline, United Airline, and Northwest Airlines, applying for position as either Navigator or Flight Radio Officer, and

(Testimony of Stanley Cummings.)

the answers in all cases—I include a list of qualifications for such employment—in all cases being I was over age.

Q. Do you recall what the maximum age for any employment was in those classifications?

A. They vary with individual airlines from 29 to, I believe, a maximum of 33, to the best of my knowledge.

Q. What other efforts did you make to secure employment aside from applying to the airlines you have mentioned? [158]

A. After failing that, I thought of going into business for myself and opened that launderette.

Q. When did you open it?

A. In March, 1949.

Q. What were your earnings from the operation from your launderette last year?

A. I believe I reported on my income tax a figure of \$1,323. Something of that sort, anyhow. \$1300 and something.

Q. That represented your net income from the operation of the launderette, did it?

A. Yes, sir, that is correct.

Q. That represents also, I take it, something of a capital investment by you? You had to invest money into that launderette, did you not?

A. Yes, all I could lay my hands on.

Q. So that in addition to the labor and time you spent on the launderette, you invested capital in it?

A. Yes.



(Testimony of Stanley Cummings.)

Q. Now, do any other members of your family work in the launderette or assist you?

A. My wife, from time to time; not regularly.

Q. So that \$1300 represents not only the capital of yourself, labor and time, but also your wife's—a portion, at least, of your wife's?

A. What she spent on the place, yes. [159]

Q. Incidentally, what does your family consist of?

A. A little boy and little girl.

Mr. Leonard: I believe that is all, if Your Honor please.

Cross-Examination

By Mr. Athearn:

Mr. Leonard, will it be stipulated that on November 19, 1946, none of the plaintiffs was in a ground position involving supervision of Flight Radio Officers?

Q. That is correct, is it?

A. That is correct.

Mr. Leonard: Yes, it will be so stipulated.

Mr. Athearn: As to all the plaintiffs?

Mr. Leonard: That is correct.

Q. (By Mr. Athearn): In 1946 did you ever have conversation with Mr. Maxwell regarding your return to the Flight Radio Officers group?

A. Yes, I believe that I did.

Q. And Mr. Maxwell was at that time what?

A. I believe his title was Operations Manager.

Q. For the defendant?

(Testimony of Stanley Cummings.)

A. Yes, for the defendant.

Q. And what did he say to you?

A. He said it was foreseeable that in the immediate future the position of Non-Pilot Navigator would be abolished.

Q. Anything else?

A. I am trying to think what the conversation was. First he [160] brought that point up. He informed me that there was in progress at that time a training and placement program, and advised as to the nature of that training and placement program. Shall I elaborate?

Q. Yes, go ahead, as near as you can recall.

A. The majority of the navigators hired, or uniformly, were hired strictly as temporary employees. The offer of employment was stated—the offer stated upon expiration of the emergency and Navy contract these men would be dismissed as Navigators, but every effort would be made to retain them in the Company in other positions. The training and placement program noted by Mr. Maxwell of Pan American Airways was in line with this statement. They were to have been going to try to qualify all of these temporary navigators employed during the war to take some other position with the Company.

Q. This applied to the men who had been Flight Radio Officers and who had been Navigators, didn't it?

A. No, sir, because we had already qualified as Flight Radio Officers, had other skills which could be utilized.

(Testimony of Stanley Cummings.)

Q. To make a long story short, didn't Mr. Maxwell urge all of you Non-Pilot Navigators who had been FROs to get back into the FRO group?

A. No sir.

Q. He didn't tell you it was for your best interests to do so as soon as possible? [161]

A. No, I don't recall that statement being made. I felt when the position of Navigator was abolished I would then return.

Q. He didn't tell you to hurry up and do the same thing that the others had done and go back to the FRO group?

A. I recall no such statement.

Q. Are you sure he didn't say it?

A. I wouldn't swear to it.

Q. He may have said it?

A. Possibly, but I don't recall it.

Q. Did you ever talk to Mr. Poindexter about the same subject?

A. Undoubtedly we discussed it from time to time, yes.

Q. Mr. Poindexter's position at that time was—

A. As he is now, Chief Flight Radio Officer for Pan American Airways.

Q. This was in 1946, approximately?

A. I had my discussion with them between 1941 and 1949. I can't specify exactly to the date it occurred.

Q. In 1946 did not on several occasions Mr. Maxwell urge you to hurry up and get back into the FRO group?

(Testimony of Stanley Cummings.)

A. No, sir, not that I recall.

Q. Didn't he tell you that there were openings at that time and you better grab them?

A. He made me no offer of employment as a Flight Radio Officer, no.

Q. Didn't he tell you there were openings and you better [162] grab them?

A. I don't recall that he did. I am sure if he did I would have done it.

Q. Then you don't think he did say that?

A. To the best of my recollection, no, sir, I don't believe he did.

Mr. Athearn: No more questions.

Mr. Leonard: I have just one or two, if Your Honor please.

### Redirect Examination

By Mr. Leonard:

Q. With respect to those temporary navigators hired during the war and subsequently laid off, had any of those men been Flight Radio Officers for the Company before the war?

A. No, sir, not to my knowledge. [163]

\* \* \*

Q. (By Mr. Leonard): During any of your conversations with Mr. Maxwell and Mr. Poindexter that you have testified to on cross examination, did either of those gentlemen inform you that it had been found no longer necessary to assign you as a Navigator?

(Testimony of Stanley Cummings.)

A. No. To the contrary.

Q. Did either of those gentlemen in the course of those conversations inform you that the position of Non-Pilot Navigator was being abolished in 1946 or 1947 when you talked to them?

\* \* \*

A. Yes, I understand it. Yes, I believe in 1946, they anticipated in the very near future, upon expiration of the Navy contracts, these jobs would be abolished.

Q. They anticipated it would be abolished at some future date?

A. Yes.

Q. But at the time you talked to them did they say the job was [165] abolished as of now?

A. Oh, no.

Q. As a matter of fact, the position wasn't abolished until November 15, 1948, as the result of that Arbitration Board?

A. Well, in 1946 they had dismissed—

Q. I am talking about classification. The classification continued in effect until the Arbitration Board, isn't that right?

A. Yes.

Q. And you and the other plaintiffs in this case, were, in fact, assigned duties as Navigators up until the time you received the telegrams following the Arbitration Board, that is a fact, isn't it?

A. Yes.

Q. Business was in existence and you men were



carrying on your duties as Navigators until that time?

Mr. Athearn: If the Court please, I think this is leading.

Mr. Leonard: Is there any question about it? Isn't it clear?

Mr. Athearn: Abundantly to me, counsel.

Mr. Leonard: All right, I will accept counsel's word for the record. [166]

\* \* \*

### JOHN FRANKLIN SCHWELLA

plaintiff herein, called as a witness on his own behalf, sworn.

The Court: Your full name, please?

A. John Franklin Schwella.

The Court: Where do you live?

A. 343 McKendre, Palo Alto.

The Court: What is your business or occupation?

A. I operate a service station.

The Court: How long have you operated the service station?

A. Since January, 1949.

The Court: All right proceed.

### Direct Examination

By Mr. Leonard:

Q. Mr. Schwella, what is your age?

A. Thirty-six.

Q. What does your family consist of?

A. Wife and two children.

(Testimony of John Franklin Schwella.)

Q. What is your formal education?

A. High school and two years of radio communications.

Q. Where?

A. Frank Williams Trade School in Los Angeles.

Q. After you completed the two year course did you obtain employment as a radio operator?

A. Yes. [167]

Q. With whom?

A. I went to sea on two different tuna boats and then on a steam schooner.

Q. How long did you go to sea and what certificates or licenses did you have?

A. I went to sea for a little over a year, and upon the termination of that obtained a first class radiotelegraph license, in addition to the first class radiotelephone I already had before.

Q. And your duties as radio operator at sea were substantially the ones described by Mr. Charman earlier in the case?      A. Yes.

Q. And was your training substantially the same as his?      A. Yes.

Q. After you went to sea what did you do?

A. I had a short time job in a screen factory waiting for another assignment. I worked in a radio laboratory for about three months, then got a job as radio operator with an airline.

Q. Which airline?

(Testimony of John Franklin Schwella.)

A. Grand Canyon Airline, Boulder City, Nevada.

Q. How long did you keep that job?

A. Approximately one year.

Q. What was your classification there?

A. At the end I was chief radio operator and dispatcher.

Q. That was for the entire line? [168]

A. Yes.

Q. And after that did you go to work for the defendant Pan American?

A. I went to work for the defendant, Pan American Airways, November 16, 1937.

Q. Mr. Schwella, counsel is prepared to stipulate with me your employment history with the defendant, and you listen and see if this is correct as near as you can recall: You first went to work for the Company as Assistant Flight Operator on November 16, 1937; that you were reclassified as a Flight Radio Officer on April 1st, 1939; that you were reclassified as Non-Pilot Navigator on July 1st, 1942; that you were reclassified as Check Navigator on March 16, 1947; that you were reclassified as a Non-Pilot Navigator on March 16, 1948; that you were terminated on November 15th, 1948?

A. Yes.

Mr. Athearn: So stipulated.

Q. (By Mr. Leonard): That is substantially correct, is that right? A. Yes.

Q. All right, now, there have already been intro-

(Testimony of John Franklin Schwella.)

duced in evidence as a result of the stipulations, Mr. Schwella, various documents and communications that you addressed to the Company and the Company addressed to you with respect to this transfer from your status in the Communications Department to the Navigations Department. You made the request that is in evidence, and you were transferred and received the same memoranda of January—withdraw that. You didn't receive the memorandum of January, 1941, did you?

A. No.

Q. Because your transfer was at a later date?

A. Mine was in February, 1942.

Q. In other words, just for the record, you were never a recipient of this document which is Plaintiff's Exhibit 1?

A. Not to my knowledge, no.

Q. But you were a recipient, were you not, of the document of April 22nd, 1943, which is Plaintiff's Exhibit 2?

A. Yes.

Q. And the fact is that your transfer from Communications to Navigation occurred at a date between the dates of these two documents, is that right?

A. That is right.

Q. And after you were terminated in November of 1948 you wrote to the Company and requested an assignment in Communications, is that right?

A. Yes.

Q. And I believe that document is already in evidence. It might not be. No, it isn't.

(Testimony of John Franklin Schwella.)

Mr. Leonard: Those documents aren't in evidence, Mr. Athearn. May we stipulate that they may go in, Mr. Schwella's letter to the Company of December, 1948, and the Company's response to him of December 6, 1948?

The Court: They may be admitted and marked next in order.

(Whereupon letter dated December 1, 1948, Schwella to Axe; and letter dated December 6, 1948, Axe to Schwella, were admitted into evidence as Plaintiff's Exhibits 10 and 11, respectively.)

\* \* \*

Q. (By Mr. Leonard): Save and except for the letter you got in 1949 and the interview with Mr. Axe—did you have an interview with Mr. Axe?

A. No, I didn't have an interview with Mr. Axe. I had an interview with Mr. Castleman, who was one of his assistants.

Q. You heard the testimony of Mr. Hrutky with regard to the kind of job that was offered or proposed to him? Was a similar job proposed to you?

A. Yes. It was a job in Los Angeles as a ground Radio Operator with a station I believe the Pan American Airways was building. They anticipated, however, in about three months the operation would be taken over by Aeronautic Radio Incorporated. I was informed that the practice of Aeronautic Radio Incorporated at that time was to take over the existing personnel. However, I was given no as-



(Testimony of John Franklin Schwella.)

insurance that they would take them over at the end of that time. The only thing I had to look forward to was possibly continue as Island Attention on Wake or some other Pacific point.

Q. So that as you understood and as a result of the interview which followed the letter of March, 1949, the job was Ground Radio Operator at Los Angeles for three months, then another group was going to take over, is that right? A. Yes.

Q. And the practice, as you understood it, was that the other group would keep the personnel on?

A. That was their practice, but of course Pan American had no jurisdiction over that.

Q. There wasn't any assurance that they would do that?

A. Not by Pan American.

Q. If they did do that, would you have been entitled to retirement benefits, for example, or any seniority benefits you would have if you continued as a Pan American employee?

A. I don't believe I understand that. [172]

Q. Well, were there any assurances this new group would have the same kind of retirement plan and you would have the same retirement benefits you would have as a Pan American employee?

A. Not to my knowledge, there wasn't.

Q. Since November, 1948, I think you told His Honor you were operating a service station commencing in January, 1949? A. Yes.

(Testimony of John Franklin Schwella.)

Q. Did you make any effort to obtain any employment as radio operator or navigator?

A. Yes, I applied for Army Transport Service as a maritime radio operator, and also with the United States Employment Service for a job as navigator or radio operator, and sometime in the spring of 1949 I was offered a job as a maritime radio operator, but at that time I was operating the service station.

Q. Up until the time you got in the service station you didn't receive any offer of employment, either radio or navigation, is that it?

A. Other than the one by Pan American.

Q. The one which you just described. How much did you earn in the operation of the service station in 1949?      A. Approximately \$5,200.

Q. Did that represent your own labor and time as well as capital you had invested in the service station?

A. Yes, and also my wife does a portion of the work in the accounting and bookkeeping. [173]

Q. How much capital did you have to invest in the service station?

A. I had to invest \$4,000 in the operating fund.

Q. And how much time does your wife spend in connection with your operation of the service station?

A. I would say approximately one to two hours a day.

(Testimony of John Franklin Schwella.)

Q. Every day? A. Yes.

Q. How much time do you spend?

A. I schedule myself, for eleven hours a day, six days a week, and Sundays off; open at 7 and go home usually at 6 or 6:30, with possibly some time off for lunch.

The Court: Where is the station located?

A. Palo Alto.

The Court: Where?

A. Middlefield and Middle Road.

Q. (By Mr. Leonard): So that from what you say, you yourself are putting in 66 hours a week?

A. Yes.

Q. Did all last year?

A. Yes. When I started the station in January, 1949, and for about three or four months I worked those hours plus Sundays because I didn't have any help.

Q. I don't think the record shows—maybe you can tell us—Flight Radio Officers whom it has been testified will earn [174] approximately \$600 a month for the company, what weekly hours do they put in for that salary?

A. I believe the average Flight Officer is limited to 85 hours a month, based on a yearly basis.

Q. And your family consists of what?

A. Wife and two children.

Mr. Leonard: I think that is all, if Your Honor please.

Mr. Athearn: We have no questions.

Mr. Leonard: If Your Honor please, that is the plaintiff's case.

WYATT FRANKLIN FISHER

called as a witness on behalf of the defendant, sworn.

The Clerk: State your full name, please.

A. Wyatt Franklin Fisher.

Direct Examination

By Mr. Athearn:

Q. And your residence, Mr. Fisher?

A. Palo Alto.

Q. How long have you been—you are connected with the Industrial Relations Department of the defendant Company? A. Yes.

Q. How long have you been so connected? [175]

A. Approximately seven years.

Q. That is, since 1943?

A. Since 1943.

Q. Until April, 1944, under what type of employment contracts were the Flight Radio Officers of the defendant's Pacific Division engaged?

Mr. Leonard: That is objected to as calling for an opinion and conclusion of the witness. The contracts would speak for themselves, and the Court would determine what type of contract.

The Court: If he knows.

A. We had oral contracts with the employees

(Testimony of Wyatt Franklin Fisher.)

at that time, and we had formalized salary scale or treatment of wages.

\* \* \*

Q. As I understand, these were oral contracts? As I understand it, Flight Radio Officers for the defendant Company prior to 1944 were engaged on oral contracts? A. Yes.

Q. No written contracts of employment?

A. No.

Q. And I believe you said something about pay scale policies?

A. We had formalized pay scale policies which set forth the [176] starting rate of pay and progress in that pay scale from minimum to maximum, along with the qualifications required to progress from minimum to maximum in the pay scale.

Q. These were not embodied in collective bargaining contracts, I take it? A. No.

Q. Or regular written contracts with individual employees? A. No.

Q. You will confine yourself to the Flight Radio Officers at the present time? A. Yes. [177]

\* \* \*

Q. (By Mr. Athearn): Was the term "seniority" used prior to 1944 in any Company memorandum or data regarding Flight Radio Officers?

A. Yes.

\* \* \*

Q. (By Mr. Athearn): Withdraw the question.



(Testimony of Wyatt Franklin Fisher.)

What type of [178] memorandum used the word "seniority"?

A. Memoranda in publications covering our retirement income plan, group life insurance plan, group life insurance, hospitalization and surgical insurance, and in your company benefits such as vacations, sick leave, and—well, that roughly covers it.

Q. Items such as sick leave, vacations, and so on were given on the basis of seniority?

A. It is computed on length of service with the company.

Q. The term "seniority" then did not refer to seniority lists as in collective bargaining?

A. No.

\* \* \*

Q. (By Mr. Athearn): It related, as I recall, to such matters as promotion, free travel and includes vacations now? A. Yes.

Q. Is there a retirement plan, or was there at the time a retirement plan for Company employees?

A. Yes, the Company's retirement plan was initiated, I think, on March 1st, 1941.

Q. That was based on seniority in the sense you have mentioned? A. Yes.

Q. I have been confining myself, my questions, to a period [179] prior to April, 1944, and in particular Flight Radio Officers. What change occurred in April, 1944, with reference to employment of Flight Radio Officers?

A. I believe the Flight Radio Officers Association

(Testimony of Wyatt Franklin Fisher.)

was recognized as the collective bargaining agent for that group of employees.

Q. That is the first time there had been any union or collective bargaining agent for Flight Radio Officers on this Division?

A. That is right.

Mr. Leonard: May the objection which we made to this testimony at the time we were putting on our case go to it as well now that the defendant is going into this matter of collective bargaining, based upon the theory of the Cabrillo case and the Harrison case that this is totally immaterial?

The Court: Let the record so show.

Mr. Leonard: Thank you.

Q. (By Mr. Athearn): I show you here a document captioned "Agreement between Pan American Airways, Incorporated, and Flight Radio Officers Association," marked Defendant's Exhibit E for identification. Are you familiar with that document?

A. Yes.

Q. And I will show you now particularly page 8 of that document which contains "Agreement for the Establishment of a System Seniority Board for Flight Radio Officers, April 17, 1946." You are also familiar with that agreement? [180]

A. Yes, I am.

Q. Now, in particular referring to paragraph (1) of the agreement of April 17, 1946, which reads: "A Master Company Seniority List shall be prepared showing every Flight Radio Officer employed by the Company on the date of signing of this

(Testimony of Wyatt Franklin Fisher.)

agreement.” You are familiar with that provision?

A. Yes.

Q. As part of your duties did you have anything to do with preparing such a list?

A. Yes, I assisted in the preparation of complete information that we had available in our files showing the employees who either were at the time Flight Radio Officers or had been Flight Radio Officers and still were in the employ of the Company.

Q. I will show you here a document captioned, “Flight Radio Officers’ Group, Pacific-Alaska Division, December 31, 1945,” and ask you whether that is the document you refer to? A. It is.

Q. That is a list prepared, in the preparation of which you participated, which was submitted to the System Seniority Board for Flight Radio Officers created under Defendant’s Exhibit E?

A. That is correct.

Q. Now, to whom was the list sent? To whom did you send the list?

A. We forwarded the list to our local office. I believe it was Vice President Cantwell who was in charge of Industrial Relations. [181]

Q. Do you know what happened to the list then?

A. It was forwarded, then, I understand, to the System Seniority Board to set up the initial seniority roster.

Q. What was this System Seniority Board? How was it composed?

A. It was composed of two members appointed

(Testimony of Wyatt Franklin Fisher.)

by the Company and two members appointed by the collective bargaining agency, the union.

Q. The union in this case was the Flight Radio Officers Association? A. That is correct.

Q. In accordance with the terms of Exhibit E, it was to compile the first Seniority List for Flight Radio Officers?

A. That is right, the first System Seniority Roster.

Q. By "System" you mean a Seniority List that would cover the Atlantic, Latin American and Pacific Alaska Divisions of the defendant Company?

A. That is correct.

Q. So that a Flight Radio Officer would have seniority throughout the entire organization?

A. That is right.

Q. Up to this time there had been no such Seniority Roster, is that correct?

A. That is correct.

Q. In particular calling your attention——

Mr. Athearn: Well, I will offer in evidence the document [182] captioned "Flight Radio Officers Group, December 31, 1945," at this time.

Mr. Leonard: We have an objection, not to the authenticity of the document, but to its materiality on the grounds heretofore stated with respect to all this collective bargaining; and secondly, on the ground that it is developed by the witness' testimony now that this was forwarded to the System Seniority Board which consists of two members appointed by the Company, two members appointed

(Testimony of Wyatt Franklin Fisher.)

by the Flight Radio Officers Union. There is nothing in the record to show these plaintiffs ever authorized them to act for them or on their behalf. [183]

\* \* \*

The Court: I will give him a record on it subject to the objection.

(Roster dated December 31, 1945, was admitted into evidence as Defendant's Exhibit V.)

Q. (By Mr. Athearn): Pointing to page—maybe we can cut this short. This exhibit V which has been offered herein contains up to page 10 what type of Flight Radio Officers?

A. All those who were actively employed at the time as Flight Radio Officers. [184]

Q. Those working on December 31, 1945, as FRO's, is that correct? A. That is right.

Q. Then beginning on page 10, who is there?

A. Employees of the Company who were on December 31, 1945, formerly employed in the Flight Radio Officers Group.

Q. Now, I call your attention to the name "Charman, A. L.," Number 2 on page 10; and on page 11 "J. A. Hrutky"; and on page 12 "Schwella, J. F." Are those the plaintiffs in this case?

A. Yes.

Q. In other words, information regarding the date of their employment, the date of their appointment to FRO Group, and other employment history was submitted through Company channels to the Seniority Board. A. That is correct.

Q. Now, referring to Defendant's Exhibit M for



(Testimony of Wyatt Franklin Fisher.)

identification, captioned "Flight Radio Officers System Seniority List," as of November 19, 1946, can you tell me what that is?

A. This was the initial Seniority Roster produced by the System Seniority Board under our first system contract with the Flight Radio Officers Association.

Q. In other words, that was the list that was compiled by this——

A. And developed from the information contained in that memorandum there.

Q. ——by this memoranda you refer to, Defendant's Exhibit V? [185]           A. Right.

Mr. Athearn: And I think it has been stipulated, counsel, that the names of none of the plaintiffs appear on this list of the names with the Seniority Board?

Mr. Leonard: That is correct. I think on neither the list itself nor in Group A nor in Group B, that is right.

Q. (By Mr. Athearn): Is that System Seniority Board still in existence?

A. No, it has been dissolved.

Q. When was it dissolved?

A. I believe it was dissolved after the initial roster was posted for the first 60-day protest period, after which a final roster was issued sometime after the first of 1947, I think it was.

Q. Calling your attention to page 19 of Defendant's Exhibit M, for identification, and in particular Note 5 there reading, "On the inactive list,

(Testimony of Wyatt Franklin Fisher.)

Group B consists of those former Flight Radio Officers who accrued seniority as such but who are no longer accruing seniority due to the nature of the positions held by them since leaving the Flight Radio Officers Group.” You are aware of that provision in the List, I take it?       A. Yes.

Q. Is that a uniform or customary provision in Pan American Airways Collective Bargaining Seniority Lists? [186]       A. No.

\* \* \*

### Cross-Examination

By Mr. Leonard:

Q. Mr. Fisher, I think you stated that when the term “seniority” was used in any Company memoranda or correspondence prior to 1944 it had reference to such matters as retirement plans, vacation, benefits under health plans, sick leave, promotion. Are there any other matters concerning which the term “seniority” was used prior to 1944?

A. Well, it was at one time, it was used basically in connection with length of service with the Company to determine employees total length of service with the Company. It was used to determine times at which he is eligible for service award pins. The length of service was one of the items used in considering promotion, as well as lay-offs as necessity of reduction of force occurred. I don’t know what other specific items I can recall right now.

Q. So that when the communication of January

(Testimony of Wyatt Franklin Fisher.)

21, 1941, which is in evidence as Plaintiff's Exhibit 1, refers at the conclusion of the first paragraph thereof to, "No loss of seniority or advantages" use the word "seniority" in that paragraph [188] referred to whatever advantages the man might have had with respect to promotion, sick leave, health benefits, vacation, retirement plans, and these other matters you mentioned?

A. That is correct.

Q. And the same thing would be true with respect to the use of the word "seniority" in the memoranda—I can't put my finger on it at the moment—of April, 1943, Plaintiff's Exhibit 2?

A. That is correct.

Q. What other factors go into the concept of seniority now since 1944 that weren't contained in it before 1944?

A. I don't know whether I am exactly qualified to answer that, but it is a matter of contractual right given under various collective bargaining agreements. It has been defined by the various agreements what it means.

Q. Whatever additional benefits, if any, there may be in existence over and above those which accrued as the result of seniority prior to 1944, they would be found in these various collective bargaining contracts? A. That is correct.

Q. With respect to the document which has been admitted into evidence as Defendant's Exhibit V, as I understand it, that is a document that was prepared by the Company for submission to a

(Testimony of Wyatt Franklin Fisher.)

System Seniority Board for the purpose of preparing a Seniority List for Flight Radio Officers pursuant to contracts between the Company and the Flight Radio Officers Union, is that correct?

A. That is correct.

Q. That was submitted, I think, in December, 1945.

A. It was submitted as of December 31, 1945. I think it was forwarded shortly after the first of the year in 1946.

Q. Early in 1946? And the System Seniority Board was one that, as you told us, was made up of two members appointed by the Company and two members appointed by the Flight Radio Officers Union, is that correct?

A. That is as I understand it.

Q. That Flight Radio Officers Union was the one which the Company in April, 1944, had recognized as the collective bargaining agent for its Flight Radio Officers, is that correct?

A. I think it was the successor to it. The original one was a local union for the Pacific-Alaska Division, and this was a national organization, system-wide organization.

The Court: This was what?

A. I think it was a successor organization. It was the same. There were three, as I recall the history of the local organization known as Flight Radio Officers Association. That was the first one.

The Court: And the next?



(Testimony of Wyatt Franklin Fisher.)

A. Then the Flight Radio Officers Association of the Pacific-Alaska Division.

The Court: Next?

A. The Latin American Division and the Atlantic Division [190] effected a system basis and asked to have system-wide bargaining rights.

The Court: And the next?

A. The Flight Radio Officers Association was succeeded by the CIO-TWA.

The Court: And the approximate date?

A. I don't recall. I think it was sometime in 1947.

The Court: When was it, counsel?

Mr. Leonard: I don't know. I will stipulate, if you have the date.

Mr. Athearn: June 30th—according to our records the Flight Radio Officers Association affiliated with the Transport Workers, CIO, on June 30, 1947.

Mr. Leonard: I have no information whatsoever, but I will accept counsel's statement that that is the fact.

The Court: All right.

Q. (By Mr. Leonard): This Flight Radio Officer's Association which had two members on the System Seniority Board to which the document, Defendant's Exhibit V, was submitted, was a group which at the time in early 1946 represented the Flight Radio Officers Group, is it not?

A. Yes.

Q. At that time in early 1946 none of the plain-



(Testimony of Wyatt Franklin Fisher.)

tiffs in this action were Flight Radio Officers, that is correct, is it not?      A. Yes, that is correct.

Q. And so far as any records that the Company has or may have were concerned, these four plaintiffs never authorized the Flight Radio Officers Association to represent them or bargain with them at or around December, 1945, or January or early part of 1946, that is correct, is it not?

A. Yes.

Mr. Athearn: We will stipulate that they did not. There was no such authorization by any of the plaintiffs to the Flight Radio Officers Association. That is not our theory at all.

Mr. Leonard: All right, fine. That is true, as a matter of fact, is it not, Mr. Athearn, of the entire period during which these men were in Navigation, or at any time?

Mr. Athearn: So far as I know, none of them ever authorized the Flight Radio Officers Association to do anything for them.

Mr. Leonard: All right, may I have a stipulation to that effect?

Mr. Athearn: That is correct.

Mr. Leonard: Thank you.

Q. And just so the record is clear, as result of the submission of Defendant's Exhibit—withdraw that. Subsequent to the submission of Defendant's Exhibit V to this System Seniority Board, which was composed of representatives of the Company and the Flight Radio Officers, why, this Seniority List, [192] Defendant's Exhibit M, for identifica-

(Testimony of Wyatt Franklin Fisher.)

tion, was promulgated by the System Seniority Board?      A. Yes.

Q. And so we understand it, that was a System Seniority Board which had to do with problems of Flight Radio Officers and not problems of Navigators?      A. That is correct.

Q. Now, with respect to the personnel whose names appear beginning on page 17 of Defendant's Exhibit M, for identification, under Group B, can you tell us, examining each name, name by name, what duties the men whose names appear there had in 1946 at the time the list was promulgated?

A. In Group B?

Q. Yes, in Group B.

A. I couldn't offhand without referring to personnel records.

Q. Can you tell us offhand whether or not any of the persons in Group B were in Navigation the way the four plaintiffs herein were of that date?

A. Again, I can't tell without referring to the personnel records. [193]

\* \* \*

JOHN D. POINDEXTER

called as a witness on behalf of the defendant, sworn.

The Clerk: Will you state your full name to the Court, please?

A. My name is John D. Poindexter.

The Court: Where do you live?

A. 201 Victory Road, Burlingame.

The Court: Your business or occupation?

(Testimony of John D. Poindexter.)

A. Radio operator.

The Court: Employed by whom?

A. Pan American Airways.

The Court: How long have you been so employed?

A. Twenty years and three months, approximately.

The Court: All right.

### Direct Examination

By Mr. Athearn:

Q. At present you are the Chief Flight Radio Officer for the defendant Company?

A. That is correct.

Q. Getting right up to the question that counsel for the plaintiff asked, referring to page 17 of the Seniority List, which is Defendant's Exhibit M for identification, and the portion marked Group B, can you tell me whether on November 19, 1946, any one of those men on Group B was a man whose then occupation with the defendant Company was that of Navigator, and I am referring to the entire Group B?      A. I am sure there were not.

Q. There were none?      A. No.

Mr. Athearn: That is the information you wanted, counsel?

Mr. Leonard: Thank you.

Q. (By Mr. Athearn): This list, Defendant's Exhibit M for identification, referring to the first page of it and the words "Active FRO System Seniority List Official Posted December 4, 1946,"

(Testimony of John D. Poindexter.)

whose handwriting is that?      A. That is mine.

Q. Can you tell me what you did with this list at or about the time you wrote that on there?

A. I posted it on the Flight Radio Officers Bulletin Board, which was installed by the Flight Radio Officers themselves for any information that pertained to their organization or their personnel.

Q. And about what date was that, do you know?

A. I received that document a few days before it was posted, before the official posting date, and I waited for that date to be given to me since the System wished to post all of them in all the Divisions at the same time.

Q. By the posting date you mean December 4, 1946?      A. That is correct.

Q. This was the actual list that you received?

A. That is right.

Q. And did you say you posted it on the FRO Association bulletin board?

A. That is correct.

Q. That was located in the FRO room at the base of the defendant company at South San Francisco?      A. That is correct.

Q. And your desk is in that room, is it?

A. Right.

Q. At that time you were Assistant Chief Radio Officer, or were you Chief?

A. I was Chief.

Q. How long did you leave the list posted on that bulletin board?

A. To the best of my recollection it was about a week or two after the 60-day period had expired.

(Testimony of John D. Poindexter.)

Q. By the 60-day period you are referring to a provision in the Agreement of April 17, 1946, which states that, "An employee shall be privileged to protest his position on the Seniority List provided that such protest is in writing outlining the reasons therefor and is made to the Seniority Board within 60 days after the Seniority List is posted," is that the 60-day period you refer to?

A. That is the one I refer to.

Q. During the period this list, Exhibit M, was posted, did any employees of the Company discuss with you their rank in the list or ask you to submit a protest to the Seniority Board?

A. Yes, there were some that contested their position on the Seniority List.

Q. Did you see employees of the defendant Company examining the list during that 60-day period?

A. I can't say that I did.

Q. Did you see any employees of the defendant? I don't mean the plaintiffs here, but——

A. Or any of the Flight Radio Officers that I had there working? That is right, many of them. In fact, all of them.

Mr. Leonard: It is leading and suggestive, Your Honor.

Mr. Athearn: Well, counsel knows——

Mr. Leonard: He said at first he couldn't say he saw any of them.

Mr. Athearn: Let's go over it again. [197]

Q. Did you see anyone look at the list during



(Testimony of John D. Poindexter.)

that 60-day period?

A. Yes, I saw practically everyone that I had working for me look at it during that time.

Q. Did you see any people look at it who were not Flight Radio Officers at the time?

A. Yes, there were people that looked at it.

Q. This particular room is one to which employees or Flight crews had access whether they were FRO's or not?

A. Yes, anyone in the Company had access to this office.

Q. Do you know whether any of the plaintiffs looked at this particular list during the 60-day period?

A. I can't say that I remember any one of the plaintiffs studying the list over. However, it is my opinion that—

Q. Well, hold it. Do you know for a fact that—would you say for a certainty that none of the plaintiffs looked at it?

A. No, I would not.

Mr. Leonard: I suggest it has been asked and answered. He said he couldn't say.

Mr. Athearn: I just wanted to make sure whether he is saying they didn't look at it or he doesn't know.

The Court: Objection overruled. Give the answer.

Q. (By Mr. Athearn): Go ahead and answer the question. Are you certain none of the plaintiffs looked at it?

A. I am not certain.

Q. You don't know, then?

A. No.

Q. As I understand, this FRO System Seniority

(Testimony of John D. Poindexter.)

List is revised from time to time, is that correct?

A. Yes, sir, that is correct.

Q. And one of them is a revision of April 11, 1947, which is referred to in the agreement of February 6, 1948?

A. Yes, sir.

Q. During the period of 1944, 1945, 1946, 1947, who was in charge of employment of Flight Radio Officers?

A. I did some of it. Mr. Axe, I believe did some of it.

Q. Who did some of the work?

A. Mr. Gentry.

Q. It was handled through your Department, though?

A. That is right.

Q. Can you tell us whether during any of those years your Department employed any Flight Radio Officers who do not appear on this list, Exhibit M?

A. What is the date of that list?

Q. This is the original list of November 19, 1946.

A. There are some others that were employed after that.

Q. Men who had no seniority on this list?

A. Correct.

Q. And under what circumstances were they employed?

A. I don't get what you mean.

Q. Well, as I understand, you employed men who had no seniority in the original list?

A. That is right.

Q. In other words, you hired men who had no seniority because you had exhausted that seniority list, is that correct?

A. That is correct.

(Testimony of John D. Poindexter.)

Q. Can you give us any idea of the number of men who were hired during those years who had no prior seniority rights?

A. I remember in 1947 there were, to the best of my knowledge, about 15 or 20 men that we employed here in this Division.

Q. New men?           A. Yes.

Q. Are you familiar with the experience and qualifications of the four plaintiffs as Flight Radio Officers?           A. Yes, I am familiar with it.

Q. Had any of them applied during 1947, would you have given them a job as a Flight Radio Officer?           A. Yes, I would have.

The Court: You know them all, do you?

A. Yes, sir.

The Court: Been friendly with them?

A. Yes, sir.

The Court: They are friendly with you?

A. Yes, sir.

The Court: All right.

Q. (By Mr. Athearn): Now, I want to direct your attention to page 3 of Exhibit M where the name T. M. Hrutky appears as Number 68, and the date March 29, 1940; appearing after his name. Can you tell me whether or not March 29, 1940, was the first date that that gentleman went to work for the defendant Company?

Mr. Leonard: That is objected to on the ground incompetent, irrelevant and immaterial. T. M. Hrutky isn't a plaintiff.

(Testimony of John D. Poindexter.)

The Court: If he knows, he may answer. Objection overruled.

A. I know why the 1940 date was given, but the man was employed in 1936.

Q. (By Mr. Athearn): Have you any idea or any knowledge why the Board would give a 1940 hiring date to a man hired in 1936? A. Yes.

Mr. Leonard: That is objected to, asking for an opinion and conclusion and obviously based on hearsay, no foundation laid. This man was employed by them. They have the document which was prepared by four people.

The Court: Lay the foundation, if you can.

Q. (By Mr. Athearn): Are you familiar with the administration of this particular Seniority List? A. Yes, I am familiar with it.

Q. Over a period of time have you seen various cases handled under it and placement of seniority?

A. Correct.

Q. Do you know whether there was any practice of the Seniority Board of assigning employment dates to people other than according to their first date of employment? A. There were.

Q. What sort of practice was that?

Mr. Leonard: I submit, if Your Honor please, the foundation still hasn't been laid. It calls for hearsay. There apparently were four members of the Board, and this witness is telling us what he understands their practice was. I submit the best evidence would be testimony from the gentlemen who actually prepared that document.

(Testimony of John D. Poindexter.)

The Court: Who are they?

Mr. Leonard: I don't know, Your Honor.

The Court: Are they available?

Mr. Athearn: Not so far as we know.

Q. Do you know who they are? Are any of the men that worked on the list here, any of the Company representatives?

A. I believe there is one in this Division.

Mr. Athearn: Your Honor, we submit he can testify what this Board did even though he didn't sit in its deliberations.

The Court: If he knows.

A. Yes, I received the instructions from the Board to explain to these various ones that applied for adjustment of seniority why they did not get the seniority they thought they were entitled to.

Q. Can you give us any information how the case regarding Hrutky was dealt with? [202]

A. I sent that in to the Board.

Q. And saw the ruling of the Board?

A. That is right. It was never contested.

Q. This date 1940 was assigned by the Board on what basis?

Mr. Leonard: I object to the question.

\* \* \*

The Court: I will allow the testimony to go in subject to motion to strike and over the objection of counsel.

Q. (By Mr. Athearn): Will you tell us how the date March 29, 1940, was selected or given as the employment date of T. M. Hrutky?

A. Yes, sir. When he left the group of Flight



(Testimony of John D. Poindexter.)

Radio Officers and became a Flight Navigator, his seniority in that group of Flight Radio Officers was terminated as accrued amount of seniority in that group. As an example, if he had five years of seniority in the Flight Radio Officers Group and was transferred as Flight Navigator and worked five more years in the Navigator's Group, when he came back to the Flight Radio Officers Group he would have the original five years of accrued seniority. That was the case with Mr. Hrutky. He had something like five years' seniority in the Flight Radio Officers' group. When he came back in 1943—or 1946, March, 1946, his seniority date was adjusted from five years from the date that he was—five years from the date that he was reinstated, which jumped his seniority from 1936 to 1940.

Q. In other words, the 1940 date was arbitrarily selected in order to express the seniority which he had retained during his absence from the Group?

A. That is correct. He then started accruing again.

Q. But he retained but did not accrue seniority while he was out of the Group?

A. I didn't get that. [204]

Q. But he retained seniority he had when he left the group?

A. That is correct, he retained it but did not accrue while he was functioning in the other category.

Q. Directing your attention to page 10 of Exhibit

(Testimony of John D. Poindexter.)

M under the Number 241, I direct your attention to the penciled notation "Rolly," and the date 9/5/42 written in under "Seniority Date." Can you tell us who Mr. Rolly is and what that means?

A. Mr. Rolly was a Flight Radio Officer who had been previously terminated during a reduction of force at the conclusion of our naval contract.

Q. Is he the same Mr. Rolly who appears under Group B?      A. Yes, W. J. Rolly.

Q. He appears on page 17 of this exhibit, "W. J. Rolly, four years, three months, eight days," is that correct?      A. That is correct.

Q. That is the seniority which he was retaining as of the date this list was promulgated?

A. That is correct.

Q. And I understand he later came back to work in the FRO group?      A. That is correct.

Q. And the date represents what?

A. His adjusted seniority date, the same as Mr. Hrutky's was.

Q. In other words, he didn't go to work for the Company in 1942?      A. Oh, no.

Q. He had worked long before that?

A. That is right.

Q. But this represents where he would have been if he had had a continuous service rather than broken service as a Flight Radio Officer?

A. 9/5/42 is the date of his seniority and the date he was employed, and you add four years, three months and eight days back, and that is where his seniority date starts.

(Testimony of John D. Poindexter.)

Q. You take the date he returned to the Group and roll back four years, eight days, and so forth?

A. Whatever he has retained.

Q. On November 15, 1948, can you tell us what the numerical position on the seniority list of the Flight Radio Officer would be least seniority but who was still employed on that date?

A. My recollection, the Junior Flight Radio Officer in the entire system had more seniority than any of the plaintiffs had accrued.

Mr. Leonard: I move to strike that as not responsive, an opinion and conclusion of the witness, if the Court please.

The Court: Read the question and answer.

(Question and answer read by the reporter.)

The Court: Let the question and answer stand. You can clarify it on cross examination if there is any question about it. [206]

\* \* \*

Q. (By Mr. Athearn): Since November 15, 1948, have you been employing any Flight Radio Officers? A. No.

Q. What has been the employment situation for Flight Radio Officers since that date?

A. Constant reduction.

Q. Can you tell us how many Flight Radio Officers are employed now, either throughout the system or in the division?

A. At the present time we are cutting back some

(Testimony of John D. Poindexter.)

and have already given them notice of termination, and when those who have had their termination notice go at the end of thirty days we will have 26 Flight Radio Officers in the Pacific-Alaska Division.

Mr. Leonard: If Your Honor please, I move to strike the answer, which is predicated on what will happen thirty days from now. It isn't responsive to the question of how many they have today. Can you give an answer to that?

Mr. Athearn: I submit it is responsive. I asked what happened since November.

The Court: What was it?

A. We would have 26 less in this Division.

The Court: How many did you have? [209]

A. Thirty-eight. We laid off 12.

The Court: When did you lay off 12?

A. They have had their notice now that they will be laid off when the 30 days notice has expired.

The Court: Why is that?

A. Due to the advent of radiotelephone communication, and we no longer require the services of them.

Q. (By Mr. Athearn): Can you tell us how many Flight Radio Officers were employed in November, 1948?

A. Not without looking at that seniority list.

Q. This one?

A. That is right. Four hundred sixteen.

Q. They were employed in November, November 17, 1946? A. That is right?

Q. Then by November 15, 1948, at the time the

(Testimony of John D. Poindexter.)

Navigators decision was made, can you tell us how many FRO's you had employed?

The Court: Approximately, if you know.

A. I can't tell from this list too well.

Q. (By Mr. Athearn): Well, we will have another witness who will have this exact information. In response to His Honor's question about the reduction of the number of Flight Radio Officers, I believe you mentioned something about the advent of radiotelephone? A. That is correct. [210]

Q. Maybe you better explain that a bit. Are you familiar with the type of aircraft that has been used in the Trans-Pacific operation of the defendant since 1940 to date? A. Yes, I am.

Q. What different kinds of planes have been used? You may refer to this diagram marked "Flight Deck Functional Diagrams."

A. The Martin M-130, the Old China Clipper, and the Boeing 314.

Q. Can you tell us the date—the Martin M-130 is the old China Clipper? A. Yes.

Q. This is a drawing showing the flight deck where the crew sit, is that correct? A. Yes.

Mr. Leonard: I make the general objection as to materiality of all this. It is a question of breach of contract. I am perfectly willing, on Mr. Athearn's representation that these are facts, to have a stipulation to the type of airplane in defendant's company. I don't think we need to encumber the record with testimony.

Mr. Athearn: I think it would be better, counsel.



(Testimony of John D. Poindexter.)

Mr. Leonard: All right.

Q. (By Mr. Athearn): The Martin M-130 is the old China Clipper, is that right? A. Yes.

Q. This diagram is the way the flight deck is located?

The Court: When did that China Clipper first go out? A. November, 1935.

The Court: It went from Alameda?

A. Alameda to Honolulu.

The Court: Were you there? A. Yes, sir.

Mr. Athearn: This shows the flight deck of the China Clipper. The lefthand corner of this diagram shows, this is where the pilot and co-pilot stay?

A. Yes.

Q. And they were physically flying the plane?

A. Yes.

Q. Directly behind them was the radio officer?

A. Right.

Q. And behind him the navigator?

A. That was down below deck.

Q. There was another deck below?

A. Yes.

Q. The engineer——

A. Back in the caboose.

Q. And the next diagram shows the Boeing 314, is that right? A. That is correct.

Q. That was used from 1940 to 1946?

A. Yes.

Q. In the Transpacific operations?

A. Right.

(Testimony of John D. Poindexter.)

Q. And how do people generally refer to that ship? A. Just the Boeing Flying Boats.

Q. Both the Martin M-130 and the Boeing 314 were flying boats? They landed on the water?

A. That is right.

Q. Incidentally, are all these diagrams to scale, approximately? A. They appear to be to me.

Q. In other words, the Martin 130 would be very large and had large crews? A. Correct.

Q. And the Boeing 314 had a pilot, co-pilot, navigator, radio officer, engineer, assistant engineer and extra crew. Is that another function?

A. Another radio operator.

Q. I see. A relief radio operator.

A. Right.

Q. Can you tell us the next type of ship that was used on the run?

A. During the war we have had some naval aircraft, the Martin PBM Flying Boats, and the Consolidated PB2Y3.

Q. Both those ships, the Martin PBM and the Consolidated PB2Y3 are shown in the second and third diagrams with pilots, radio officer, navigator, and engineer, is that correct? [213]

A. That is correct.

Q. Can you tell us the next type of plane that was used on the run?

A. That was a Douglas DC-4.

Q. And that is shown here as 1945 to 1950?

A. That is right. We still have them.

Q. Some of those are still being used? Those

(Testimony of John D. Poindexter.)

have also the same functions as mentioned on the two previous, is that correct.

A. What do you mean?

Q. Pilot, co-pilot, radio officer, engineer and navigator? A. That is right.

Q. The Lockheed Constellation was used during what period on the trans-Pacific run?

A. 1946 to 1947.

Q. This diagram shows the members and function of the crew in the nose of that ship?

A. That is right.

Q. This is the nose of the ship, is it not? (indicating) A. Yes.

Q. What is the new type of plane now being used? A. That is the Boeing Stratocruiser.

Q. The B-377? A. Yes.

Q. That is a double-deck type of plane?

A. That is right.

Q. Does this diagram clearly show the functions on the flight deck of the Boeing 377?

A. That is correct.

Q. This shows the functions on that flight deck as it is used on the trans-Pacific run from San Francisco and Los Angeles to Honolulu and Manila—to Manila and Tokyo? A. Correct.

Q. That was pilot, co-pilot, engineer and pilot navigator? A. That is right.

Q. The pilot navigator is the man who can fly the ship as well as navigate?

A. He relieves the pilots, yes.

Q. Where is the radio officer then, on that ship?

(Testimony of John D. Poindexter.)

A. There is no radio officer on there. Those planes carry on their communications by radio-telephone.

Q. You might briefly explain the difference between radio-telephone and radio-telegraph.

A. Radio-telegraph equipment must carry a licensed radio operator capable of transmitting and receiving messages in code.

Q. That is the old dot-and-dashes, is it?

A. Yes.

Q. Like a telegraph key? A. Exactly.

Q. Radio-telephone is worked by voice?

A. That is correct. The pilot picks up the microphone and [215] talks to the station.

Q. On the Boeing Stratocruiser if the pilot had occasion to transmit a message to the home base, how does he do it?

A. Just picks up the microphone and meshes the button and calls the base.

Q. Direct? A. Direct, yes.

Q. If he was in Manila would that be true?

A. He will call the guard station which is guarding him, which will be either Manila or Guam, whichever he was closest to.

Q. And they connect him direct? A. Yes.

The Court: And they can talk to him directly by voice?

A. By voice.

The Court: I can almost understand this situation, gentlemen, in relation to your jobs. I can see

(Testimony of John D. Poindexter.)

them fading away with this modern method. All right.

Q. (By Mr. Athearn): How long have you been in the radio communications field, Mr. Poindexter?

A. Since 1920.

Q. Are you familiar with the type of radio communication used both by the defendant and other airlines?

A. Generally speaking, yes, sir. [216]

\* \* \*

Q. Shore to shore radio stations use what type of radio transmission now?

A. They are gradually developing this radio-teletype which they are using now to move most of our traffic out across the Pacific, point to point.

Q. Generally what does radio-teletype do? How does it differ from voice radio?

A. Anyone that can operate a typewriter can operate that.

Q. In other words, a typewriter at the transmitting point runs a tape which is sent through the air?

A. That is right. As he types on the typewriter, it cuts a tape which is fed into a transmitter which transmits it, and the operator on the other end picks this up, feeds it into another typewriter which types exactly what this one is tying.

Q. Do any airplanes carry a radio-teletype?

A. President Truman's is the only one I know of.

Q. President Truman's plane has a radio-teletype of this kind you have mentioned?



(Testimony of John D. Poindexter.)

A. That is right, so I have been told. [217]

Q. On the basis of your experience in the radio field, have you formed any opinion of the probable future employment of radio officers on international flights, in, let us say, the next ten or twenty years?

Mr. Leonard: That is objected to on the ground it is speculative, conjectural, and no foundation laid.

\* \* \*

The Court: It goes to the weight of the testimony.

\* \* \*

A. I don't think there will be any Flight Radio Officers.

Q. (By Mr. Athearn): You mean that there will be no individual persons doing nothing but sending radio messages?

A. That is right.

Q. That will be combined with pilot and other functions, is [218] that right?

A. Radio-telephone.

Mr. Athearn: That is all we have from this witness.

### Cross-Examination

By Mr. Leonard:

Q. What factors did you take into consideration, Mr. Poindexter, in forming your opinion, the one you just expressed?

A. Past history, I suppose.

Q. Anything else?

A. My own observations of the efficiency of operation of the modern type of equipment.

(Testimony of John D. Poindexter.)

The Court: I don't know who prepared this map, but that would almost give you the answer.

Mr. Leonard: Possibly so, Your Honor. I would like to proceed and ask the witness this.

The Court: I will not interfere with your procedure at all. Proceed.

Q. (By Mr. Leonard): Mr. Poindexter, you stated that radio-telephone involved direct communication between the airplane and a base, in your case either a base here in San Francisco or one in Manila, is that correct?

A. Well, the direct radio-telephone communication as between the stations having the responsibility of the guard, that is, usually consists of three stations: the one of departure, the one of arrival, and an alternate in case he loses communication with [219] one of them.

Q. Well, take your last plane there in the panel, this Boeing Stratocruiser which has radio-telephone. First let me ask you, does it have any other radio equipment besides radio-telephone on it?

A. Radio-telephone equipment is adaptable for telegraph or radio-telephone.

Q. So that the equipment which it has is adaptable to be used as radio-telegraph?

A. Just by throwing a switch.

Q. And the persons who would use it as radio-telegraph are persons trained as Flight Radio Officers, is that correct?

A. That is correct.

Q. So by throwing a switch, to get back to what we were talking about earlier, you would have the

(Testimony of John D. Poindexter.)

equipment to give these men their jobs so that when you throw the switch so it is on the radio-telephone phase of operation—I am probably not using correct technical terms, but I think you understand what I mean—a pilot who is not necessarily trained as a Flight Radio Officer can operate the radio-telephone equipment by simply talking into a microphone?

A. That is correct.

Q. And if I understand it correctly, he can by talking into the microphone put himself in communication with, generally speaking, three stations: the point of departure, the point of [220] arrival, and some alternate point? A. Correct.

Q. And only with those three stations, isn't that right? A. Not necessarily.

Q. With radio-telephone equipment as it is now in the Boeing Stratocruiser, has radio-telephone, not telegraph, with what other point can he put himself in communication?

A. Any station that happens to be guarding that particular frequency.

Q. Well, as a practical matter, when blind flying across the Pacific Ocean, what stations are guarding the frequency of the Boeing Stratocruiser?

A. CAA radio stations and Air, Inc., radio stations.

Q. In addition to the point of departure, departure and arrival, there are CAA radio stations, is that what you say? A. That is right.

Q. Where are they located?

(Testimony of John D. Poindexter.)

A. They are located in San Francisco, Honolulu, Wake, Guam, Canton.

Q. And what was the other group you mentioned?

A. Air, Inc. Aeronautical Radio Incorporated.

Q. Where is that located?

A. San Francisco, Honolulu, Los Angeles, Seattle, Tokyo, Manila. I think that is all.

Q. So that a pilot can put himself into communication with [221] certain air stations when he is flying across the Pacific, with certain air stations up and down the Pacific Coast and certain named islands in the Pacific Ocean and Tokyo?

A. Yes.

Q. Can he put himself in communication with any ships by radio-telephone?      A. No.

Q. In order to communicate with ships you have to use radio-telegraph, is that right?

A. Radio-telegraph.

Q. When a radio-telegraph message is sent out it does not go to this limited number of stations we discussed with radio-telephone, but the radio message simply goes over the ether waves and anybody who happens to pick it up can pick it up, is that right?

A. If it is on 500 kilocycles, it is an international distress frequency guarded by all ships and stations.

Q. About this radio communication, as a result of safety at sea and development there has grown up one particular frequency which you mentioned—

A. 500 kilocycles.

(Testimony of John D. Poindexter.)

Q. —which is known throughout the world as an international distress frequency, is that correct? [222]

\* \* \*

Q. Mr. Poindexter, in forming your opinion that within the next ten to twenty years there wouldn't be any FRO's or any radio-telegraphy in aviation, did you take into account the [225] fact that there is an international distress signal of 500 kilocycles which is a radio-telegraph wave length?

A. Yes.

Q. And did you consider the fact that as of the present time—not in the future, as His Honor suggests, but at the present time 500 kilocycles, which is a radio-telegraph frequency, is the one recognized internationally by vessels throughout the world as the SOS or safety frequency?

A. That is right.

Q. And it is your opinion, then, that the airlines in the next ten to twenty years will forego the use over long water flights from here to areas in the Pacific, will forego the opportunity to use the 500 kilocycle frequency, is that correct?

A. I don't think it would forego the use of it, but it will forego the use of carrying Flight Radio Officers.

Q. In other words, you will have some radio equipment to operate on that 500 kilowatt frequency, but you won't use Flight Radio Officers, is that what you are saying? A. That is correct.

Q. In other words, the kind of person who will



(Testimony of John D. Poindexter.)

operate the radio equipment might be changed, won't be Flight Radio Officers but another person will operate the radio equipment?

A. It will just be for emergencies.

Q. It will be for emergency? But it will be necessary and there will be radio equipment to be operated at least in this [226] emergency situation, the SOS and safety at sea situation?

A. That is right.

Q. Did you also take into consideration, Mr. Poindexter, when you formed your opinion that there would be no Flight Radio Officers in ten to twenty years, that on March 20, 1950, the Civil Aeronautics Board issued a report which required communications equipment and facilities for long over-water flights?

A. That is right.

Q. Are you familiar with that report?

A. Yes, sir.

Q. The Civil Aeronautics Board is a Federal agency, is that correct?

A. That is correct.

Q. Just generally, without detail, what jurisdiction does it have over operations of the defendant in this proceeding, of Pan-American?

A. They formulate the laws regarding safe operation of aircraft.

Q. And they promulgate regulations which, under the law, the Pan-American Airways has to follow?

A. That is correct.

The Court: At the inception, in 1935, they had water planes. What about when you got down in

(Testimony of John D. Poindexter.)

the water? As a practical matter, what occurs in this later plane?

A. They have a spare transmitter which they put into the life [227] rafts capable of transmitting a distress signal on this distress frequency.

The Court: Of course it has nothing to do with the merits of the case, but this modern age, I try to keep up as best I can with what is going on.

Q. (By Mr. Leonard): I show you, Mr. Poindexter, a mimeographed document bearing the caption "Civil Aeronautics Board, Washington, D. C." That is the report we both referred to concerning the use of 500 kilocycles frequency by the CAB, issued within the last month or so?

A. That is correct.

Mr. Leonard: We offer it in evidence.

Mr. Athearn: No objection, I don't think it is relevant. This turns it into a judicial review of a decision by the CAB.

The Court: Let the record indicate the purpose of this offer.

Mr. Leonard: Yes, if your Honor please; it is limited solely and exclusively to meet the testimony brought out on direct examination of this witness, particularly so much of it as relates to the opinion with respect to the future of Flight Radio Officers and the use of Radio-telegraphy aboard aircraft over long water routes. (Whereupon, the mimeographed document bearing caption "Civil Aeronautics Board, Washington, D. C.," was admitted into evidence as plaintiffs' Exhibit 12.) [228]

(Testimony of John D. Poindexter.)

\* \* \*

Q. (By Mr. Leonard): Mr. Poindexter, with respect to Defendant's Exhibit M, for identification, you say that that was posted on an FRO bulletin board in the room in which you had your desk for some two weeks in excess of the sixty days after November, 1946, is that it?

A. That is correct.

Q. In what building was that room located?

A. Between 1945 and 1948 I moved so many times, I can't remember exactly where it was. I moved about five or six times.

Q. All right, do you know whether or not, Mr. Poindexter, a similar list was ever posted for Navigators at any place?

A. Flight Radio Officers' list?

Q. No, for Navigators? Do you know whether they had this kind of list that was ever posted anywhere?

A. I am not sure, but to the best of my recollection it was posted also. The Pilots I know was, and I believe the Navigators was posted also.

Q. You know the Pilots' list was and you think the Navigators was? Did you ever have occasion to see those lists, Pilots and Navigators lists? [229]

A. The Pilots' List, I did. I don't remember definitely having seen the Navigators' List.

Q. You stated that during 1944 to 1947 you along with Mr. Axe and Mr. Gentry were in charge of the employment of Flight Radio Officers, and you

(Testimony of John D. Poindexter.)

said in 1947 you did employ some 15 or 20 new men, is that right?

A. To the best of my recollection, yes.

Q. I think you also said you would have given the plaintiffs employment as Flight Radio Officers if they had applied for such employment?

A. I would have considered them, yes.

Q. You would have considered them? Did you ever get in touch with them and offer them such employment, or communicate with them in any way?

A. I don't believe I can say that I did, nor that I didn't. I don't remember.

Q. Can't say one way or the other? A. No.

Q. You knew that they were then functioning as Navigators for the Company, did you.

A. That is right.

Q. You knew that they had been Flight Radio Officers and that they transferred to Navigation in 1941? A. That is right.

Q. As a matter of fact, the three plaintiffs who are in the [230] courtroom today, that is, all those except Mr. Charman, were the last three men to actually fly as Navigators for the Company, isn't that right? A. I believe so.

Q. And they were being used as Check Navigators and as Instruction Pilots in Navigation, isn't that right? A. That is right.

Q. And you knew that at the time, did you not, all through 1947 when they were doing this work?

A. In 1947 I am not sure I knew that.

Q. 1948? A. Possibly 1948, yes.

(Testimony of John D. Poindexter.)

Q. You knew they were functioning for the Company, that is, training pilots and training other navigators, isn't that right? A. Yes.

Q. Isn't that the reason why, although you might have had some openings in Communications, you didn't call on them to transfer because the Company needed their services in Navigation during 1947 and 1948? A. That is possible, yes.

Q. Then of course beginning with November 15, 1948, when navigation posts were abolished, the Company no longer needed those services in Navigation, that is correct, isn't it? After the Arbitrator's Award?

A. That is when they were terminated, yes. [231]

Q. Did you get in touch with them after that and tell them you could use them as Flight Radio Officers? A. No.

Q. Directing your attention again to Defendant's Exhibit M, page 10 thereof, Mr. Athearn pointed out that the name Rolly there, dated 9/5/42, was inserted in pencil; and let me ask you first, was this pencil insertion on the list when it was posted in 1946? Was that pencilled notation on the list when it was posted? A. I don't believe it was.

Q. It was put on there at some subsequent time?

A. That is right.

Q. Did you put it on?

A. When Mr. Rolly returned to the job.

Q. Did you put Mr. Rolly's name there? Is that your writing? A. That is my writing.



(Testimony of John D. Poindexter.)

Q. When did you put this on?

A. At the time he was reemployed. I would have to check the records to see.

Q. In other words, you put it on——

A. It wasn't 9/6/42, obviously, when the list itself wasn't promulgated until 1946.

Q. Of course, but it was sometime between the time the List was promulgated and the present day that you made that insert?

A. That is right. [232]

Q. At the time you made that insert, however, you didn't bother to scratch Rolly's name off Group B on page 17, did you?      A. No.

Q. On November 15, 1948, do you know who the Junior FRO—Flight Radio Officer—was?

A. Yes.

Mr. Athearn: Counsel, may I let the witness refresh his recollection from the document?

Mr. Leonard: If he needs it. He said he knows.

A. A man in the Atlantic Division named Everett, I believe.

Q. Do you know what his date of employment was with the Company?

A. Yes, Flight Radio Officer.

Q. His date of employment?

A. Oh, his date of employment? Not without referring to the List.

Q. Counsel has given me the Seniority Roster wherein is marked Mr. Everett's name. Would that be correct, his date of employment, 4/19/43?

(Testimony of John D. Poindexter.)

A. That is right, his seniority date.

Q. Seniority date? All right. So that as of the date that the plaintiffs in this case were terminated the Junior Flight Radio Officer was one whose seniority date was April 19, 1943?

A. That is correct.

Q. And according to the numbering at the side, there were 274 such Flight Radio Officers in the office, is that right? [233]

A. Yes, that is right.

Q. Everybody given a seniority date senior to April 19, 1943, was in fact employed as a Flight Radio Officer on November 15, 1948, when these men were discharged?

A. That is right.

Q. Do you happen to know whether Mr. Everett's seniority date corresponds with his date of first employment with the Company?

A. No, I am not familiar with it.

Q. Of the 274 men up to and including Mr. Everett, do you happen to know how many instances there are where the seniority date as it appears on the list does not correspond with the date of first employment?

A. I couldn't say definitely how many. I know there are some.

Q. There are some? Mr. Hrutky, Ted Hrutky, is one example?

A. Mr. Ted Hrutky. Mr. Hendrickson is one, and Mr. Davis is another, and Mr. Rolly is another one.

(Testimony of John D. Poindexter.)

Q. That is four. Would you say there were a dozen of them?

A. Those are just in this division.

Q. I am talking about this division.

A. Those are about the only ones I recall at the present time.

Q. In other words, it is fair to say that substantially the dates of seniority on the Seniority List correspond with dates of first employment of the men by the Company, isn't that correct?

A. No.

Q. That is not correct?

A. No, that is what I was just saying. There are about four that I remember there where they do not coincide.

Q. Out of 274? I see.

Mr. Athearn: He spoke of the Pacific Division and this is system-wide.

Mr. Leonard: We will get to that.

Q. How many of the 274 are in the Pacific Division, approximately?

A. I believe about 100, approximately, at the time.

Q. Of the 100, there are about four of them, you say, whose seniority date is different from the date of first employment?

A. That is correct.

Q. So that in fact there are about 96 out of the 100 whose seniority date corresponds with their date of first employment?

The Court: Why that differential?

(Testimony of John D. Poindexter.)

A. That is due to their having gone into another job and quit accruing seniority, in this Group, then when they return there is a readjustment of seniority date.

Q. (By Mr. Leonard): As far as Mr. Hrutky, Ted—— A. Yes?

Q. ——in his case you said there was no protest with that procedure, or no contest by him?

A. Yes.

Q. That is also the case in the other three or four men, isn't that right?

A. That is right.

\* \* \*

Q. Now, you said in November, 1946, there were approximately 415 FRO's—416. Do you remember that testimony? A. 416, yes.

Q. Were you talking about system-wide?

A. System-wide.

Q. Tell us about the Pacific Division. How many were there in the Pacific Division in November, 1946? A. November, 1946, approximately 114.

Q. And you didn't have figures for November, 1948? I think you said you didn't have those?

A. November, 1948, I believe there were around 98. I am not sure. I would have to refer to my List. That is approximately correct.

Q. Incidentally, do you know who the Junior Flight Radio Officer was in the Pacific Division on November 15, 1948?

Mr. Athearn: We object to that. It has already been testified this was a system-wide seniority list,

(Testimony of John D. Poindexter.)

so that it would be purely arbitrary who the man on the Pacific list was.

Mr. Leonard: All right, I accept that. [236]

The Court: This diagram hasn't been marked.

Mr. Athearn: No, I was going to move for its admission, Your Honor.

The Court: Let it be admitted and marked, next in order.

Mr. Athearn: We will offer the diagram marked "Flight Deck Functional Diagram" as Defendant's exhibit next in order.

(Whereupon diagram above referred to was marked Defendant's Exhibit W, and received in evidence.)

Q. (By Mr. Leonard): With respect to that diagram, Mr. Poindexter, do you know which of those various ships that are demonstrated there were actually flown by any of the plaintiffs when they were Flight Radio Officers or Navigators? Which ones did they fly?

A. They flew the Martin M130, and the Boeing 314. I don't believe that they were ever assigned as Flight Radio Officers on any of the others.

Q. You say you don't believe they were?

A. No, I don't believe so.

Q. Are you certain of that?

A. No, I am not certain. I don't remember the exact date we received the first PBM Martins which were given us by the Navy after we were under the Navy contract.



(Testimony of John D. Poindexter.)

Q. How many of those Douglas C-4's is the Company operating in this Pacific Division?

A. At the present time I think about eight. [237]

Q. And how about the Lockheed Constellations, how many of those in the Pacific Division?

A. None.

Q. How about the Stratocruisers?

A. Eleven.

Q. Eleven? A. I believe that is right.

Q. In 1941, what were your duties with the Company? What was your position?

A. 1941? Chief Flight Radio Officer.

Q. At that time, prior to their transfer to Navigation, these four plaintiffs worked under you, is that right? A. That is right.

Q. And you knew that they were transferred to Navigation? A. That is right.

Q. Did you know that they had received these documents which are in evidence, Plaintiff's Exhibits 1 and 2, these communications from the Company with respect to their retransfer back?

A. No, I never knew they had that. I never received a copy of that in my office.

Q. You never received a copy until this suit was instituted, and you never knew these men had received such communication from the Company, is that right?

A. That is correct. At that time most of the correspondence in connection with moving of personnel from one department to another was handled by the Communications Superintendent's Office and

(Testimony of John D. Poindexter.)

his secretary, so I didn't—my primary duty was training and assignment to their flights, checking their work.

Q. More of an actual operational function than labor relations or employment function?

A. That is right.

Q. Or personnel function.

A. That is right.

Mr. Leonard: I think that is all.

### Redirect Examination

By Mr. Athearn:

Q. I am going to ask this witness to refer again to this list, the Seniority List, and ask you if you can tell me as of November 16, 1948, who the most junior man was on the FRO Seniority List who was employed? A. That is a Mr. Everett.

Q. That is the Mr. S. L. Everett whose number was 274? A. That is right.

Q. And whose employment date was April 19, 1943? A. Right.

Q. And as I understand it he had five years, seven months, eight days seniority, is that right?

A. Approximately.

Mr. Leonard: Well, just a minute, if Your Honor please——

Mr. Athearn: This is just arithmetic.

Mr. Leonard: Let me make my objection. There isn't anything on the document that says he had five years, seven months, or whatever it was, senior-

(Testimony of John D. Poindexter.)

ity. It says at the top of it "Seniority Date" and gives a date. Counsel says it is a matter of subtraction. Here we get into a matter into which Your Honor will interpret the document. I think the record should show counsel handed the witness a paper and apparently read from the paper something that says he had five years seniority. It doesn't say any such thing. It gives the employment date.

The Court: What is the fact, if you know?

Mr. Leonard: The fact is that it says "Seniority Date 4/19/43" and I will stipulate to that.

Mr. Athearn: I will ask this: Mr. Witness, can you in your head subtract from November 16, 1948, the year April 19, 1943, and tell me whether the difference is five years, seven months and eight days?

Mr. Leonard: Objected to, if the Court please.

Mr. Athearn: I am just asking him if he can do the subtraction.

Mr. Leonard: I object to that on the ground it is something the Court can do. The document is in evidence.

The Court: It is a matter of subtraction.

Mr. Leonard: Yes. I submit Your Honor can do that. We don't have to have the witness do it.

The Court: We will let the witness do it and then I won't have to do it. [240]

Mr. Leonard: Very well, Your Honor.

Q. (By Mr. Athearn): Do you know whether that subtraction is accurate?

(Testimony of John D. Poindexter.)

A. That subtraction is accurate because the gentlemen down there and myself did it.

Q. Did you do some arithmetic about the employment as a Flight Radio Officer of the plaintiff Charman?

Mr. Leonard: Objected to on the ground it is incompetent, irrelevant and immaterial. There is nothing in this record to indicate this man should have done any arithmetic about the employment as Flight Radio Officer of the plaintiff Charman, if Your Honor please. The Company's contracts, which are in evidence as Plaintiff's Exhibits 1 and 2, say Mr. Charman will be returned to his services as Flight Radio Officer without any loss of seniority. Well, he is apparently having the witness adopt some theory of his own and do his subtracting on that basis.

The Court: I am giving you both an opportunity to have your record on your theories.

Q. (By Mr. Athearn): Have you calculated how many years, months and days the plaintiff Charman was employed as a Flight Radio Officer?

A. Five years, two months, twenty-five days.

Q. And the next plaintiff in order?

A. Cummings, five years, one month, twenty days. [241]

Q. And the next plaintiff?

A. Hrutky, three years, six months, sixteen days.

Q. And the next one?

A. Schwella, four years, seven months, fifteen days.

(Testimony of John D. Poindexter.)

Q. Had each of those plaintiffs been placed on the seniority list as of the 16th of November, 1948, what would have been the simulated seniority date?

Mr. Leonard: Objected to, if Your Honor please, on the ground incompetent, irrelevant, and immaterial. There has been no testimony about any simulated seniority. The contract we are suing on here, which is in evidence, says, "You will be returned to your job commensurate with your length of service with the Company and seniority," not to any simulated seniority.

The Court: I will give him a record.

Q. (By Mr. Athearn): What would have been the dates for each plaintiff?

A. They couldn't be employed. The junior man in the system had more seniority than any of these.

Q. But what would their dates have been if they had been inserted on the list below the point of employment?

A. Five years, two months, twenty-five days back.

Q. No, what would have been the year back? Have you calculated what that is?

A. That would be, Charman would have been 9/22/43.

Q. Go ahead.

A. Cummings, 10 / 14 / 43. Hrutky, 4 / 30 / 45. Schwella, 4/1/44.

Q. All those would have been more junior than the last junior man employed on that date?

A. That is right.



(Testimony of John D. Poindexter.)

Mr. Athearn: No more questions.

### Recross-Examination

By Mr. Leonard:

Q. Did you do all that earlier or while you were on the stand here did somebody at counsel table do it during recess?

The Court: He said he did it while sitting down there and he had assistance.

Mr. Athearn: Who helped you?

A. Mr. O'Keefe. We handled it together.

Q. (By Mr. Leonard): Mr. Poindexter, did you also do any arithmetic basing your computations on the original date of employment on Mr. Charman, Mr. Schwella, Mr. Hrutky, and Mr. Cummings? Did you make any such arithmetic? A. No.

Q. Showing you Defendant's Exhibit M, for identification, I think the record shows already Mr. Charman was first employed by the Company as a Flight Radio Officer or Assistant Radio Officer on October 7, 1935; and accepting that as seniority date on this roster, Mr. Schwella would appear between Number 9 and Number 10 on the list?

A. If you figure seniority that way, it would be correct. [243]

Q. That is right. With respect to the other plaintiffs in this case, if you figured the seniority that way each of them would be within the first twenty on the System Seniority List of November 19, 1946, isn't that right?

(Testimony of John D. Poindexter.)

A. They would be substantially higher in seniority.

Q. As a matter of fact, the junior man, Mr. Schwella, I think was employed some time in 1937, is that your understanding? A. I believe So.

Q. So that as you said they had substantially high seniority.

The Court: Call your next witness.

Q. (By Mr. Leonard): Now, you said that you couldn't have offered those men a job, or couldn't have employed them in 1946 because they would all be junior to this—what's his name?—Mr. Everett.

Mr. Athearn: What year? A. 1946? No.

Q. (By Mr. Leonard): When was it?

A. When they were laid off.

Mr. Athearn: In 1948? A. Yes.

Q. (By Mr. Leonard): Were they junior to Mr. Everett in 1946 and 1947?

A. Possibly not. Their seniority was accrued and stood still while Mr. Everett continued to accrue seniority.

Q. Did you check their seniority in 1947 and find out what seniority they had?

A. No, I have no reason to.

Q. What did you mean when you told His Honor on direct examination you would have given these men jobs if they had applied for them in 1947?

A. At that particular time I was short and needed Flight Radio Officers and hired new men because I could not get old experienced men.

(Testimony of John D. Poindexter.)

Q. You mean you had gone out through that seniority list in 1947?

A. Gone through it? Yes.

Q. But there was nobody on the seniority list out of work in 1947? A. That is right.

Q. That is right? All the Flight Radio Officers on the List were employed in 1947?

A. That is right. There was no one I could offer employment to, so we were required to hire new men.

Q. And at that time, as you have told us, you did not get in touch with these men and seek to employ them as Flight Radio Officers, that is correct, isn't it?

A. I don't remember having contacted them.

\* \* \*

### DELVIN EUGENE AXE

called as a witness on behalf of the defendant,  
sworn.

The Court: Your full name?

A. Delvin Eugene Axe.

### Direct Examination

By Mr. Athearn:

Q. Where do you live?

A. 344 Concord Drive, Palo Alto.

Q. Your business or occupation?

A. I am Division Communications Superintendent, Pan-American.

Q. How long have you been so employed?

(Testimony of Delvin Eugene Axe.)

A. Since 1947.

Q. Prior to that your title was what?

A. I had a number of titles prior to that.

Q. In 1946, what was your title?

A. I was Assistant Communications Superintendent, which job actually, the title at that time was Manager of Communications, which would make me Assistant Manager.

Q. At that time FRO's were under the Communications Department? A. That is right.

Q. In 1946 did you ever have any conversation with the plaintiff Cummings, about employment as a FRO? A. Yes, sir.

Q. Where did that occur?

A. In the Administration Building at Mills Field, South San Francisco.

Q. What portion of the Administration Building? A. Second floor.

Q. In what room?

A. As I recall, the conversation wasn't in a room. It was held in the hall.

Q. Who else was there, if you can remember?

A. I can't remember specifically now. I remember Mr. Cummings very specifically inasmuch as he acted somewhat as spokesman for the group, but there were two or three other ex-FRO non-pilot navigators with him.

Q. Let me see, there were two or three other persons who at one time had been Flight Radio Officers but who were then Non-Pilot Navigators in addition to Mr. Cummings, is that right?

(Testimony of Delvin Eugene Axe.)

A. That is right, yes, sir.

Q. And they met you in the hallway, did you say?

A. Yes.

Q. What was said?

A. To the best of my recollection Mr. Cummings acted somewhat I suppose I might say, as spokesman.

Mr. Leonard: I move to strike that as an opinion and conclusion of the witness.

The Court: That is a fact; is that a fact?

A. Yes, sir, it is a fact.

The Court: All right. [247]

Q. (By Mr. Athearn): Proceed.

A. Mr. Cummings acted as spokesman for the group. He showed me a letter from Mr. Angus, the one of 1941.

Q. You refer to the one that was like Plaintiff's Exhibit 1?

A. No, sir, I don't. It seems to me it was a much shorter letter.

\* \* \*

Mr. Athearn: Very well. He had a letter signed by Mr. Angus to what effect?

A. To the effect that he had been transferred to duty as a Navigator; that in the event that job should prove of a temporary nature he would be reinstated as a Flight Radio Officer with the seniority and privileges, I believe it said—certainly it mentioned seniority that he held at that time.

Q. And what did he say further respecting that?

A. As I recall, the conversation opened with a



(Testimony of Delvin Eugene Axe.)

question as to whether or not we, meaning the Communications Department, presumably, intended to honor Mr. Angus' letter. [248]

Q. And what was said next?

A. I stated to him emphatically that I would honor to the very best of my ability any commitment made by George Angus.

Q. What was said next?

A. We then discussed the—I am only taking time to refresh my mind to get it all in focus—we discussed the status of the Non-Pilot Navigators, and discussed the desirability from their standpoint of returning to the Flight Radio Officers group.

Q. Did you make any definite recommendation?

A. Yes, I did.

Mr. Leonard: I object to what recommendation he made.

The Court: What was said?

A. I told them upon the basis of my knowledge as a rather minor executive of the company that I would recommend that they get back into the FRO group, the reason being that union contract obligations were becoming more stringent daily. I told them I would take that action on application; that it would be an extremely difficult problem, perhaps, but that I felt it could be liquidated and we would do our best to do so on application.

Q. (By Mr. Athearn): Was there anything else said in that conversation?

A. Nothing that would change the general subject I have discussed, no. [249]

(Testimony of Delvin Eugene Axe.)

Q. Did you thereafter receive any applications from any of the plaintiffs for an FRO job prior to November of 1948? A. I did not.

Q. Had any applied, would you have been able to place them? A. I believe we would have.

Q. Do you feel they were qualified for FRO jobs?

A. I can state unqualifiedly that, to my personal knowledge, that each of the defendants——

Q. Plaintiffs?

A. All right, the plaintiffs individually are some of the best qualified men in the industry.

Q. You would have been happy to get them back then, wouldn't you? A. Most certainly.

Q. Did you have any other conversations later with—along the same line?

A. Yes, I did have, but I don't recall what specific individuals.

Q. You don't remember whether you talked to any of the plaintiffs after that?

A. No, I couldn't say.

Q. At the present time do you have any FRO jobs that are available for employment in your division in your department? A. No, sir.

Q. You are laying them off, aren't you?

A. That is right. [250]

Q. What kind of jobs are there, either filled or unfilled, in your department now? A. None.

Q. Well, you have some men working in your department, don't you?

A. Yes, we have, but there are no vacancies.

(Testimony of Delvin Eugene Axe.)

Q. What general type of men do you have now working, what kind of employment?

A. Three general classifications: 1, the administrative; secondly, engineer; and thirdly, maintenance.

Q. About how many administrative?

A. About eight.

Q. Do you think any of the plaintiffs is qualified for any of those eight administrative jobs?

A. No, sir, at the present time and with the knowledge I have I do not think so.

Q. And the second group was what type of job?

A. Engineering.

Q. Will you describe what that is?

A. Those jobs require personnel who are qualified engineers, or men who have had a great many years of practical experience and intimate experience with design and installations and that sort of work. The chief engineer must be a graduate electrical engineer, at least, with a considerable number of years' experience. [251]

Q. Is any of the plaintiffs qualified for one of those jobs? A. Not to my knowledge.

Q. And the last group of jobs?

A. They are mechanics' jobs, mechanical nature, repair, maintenance, installation.

Q. Kind of shop jobs?

A. Shop jobs, yes, sir.

Q. What do they pay, approximately?

A. They start about at \$1.08 an hour and have

(Testimony of Delvin Eugene Axe.)

a top of \$425 a month for the so-called assistant foreman classification.

Q. Do you have any group radio operators jobs available?

A. None wherein we could utilize American personnel.

Q. They have to be citizens of other countries?

A. That is right.

Mr. Athearn: No more questions of this witness.

### Cross-Examination

By Mr. Leonard:

Q. Mr. Axe, don't you employ any Flight Radio Officers today?

A. Well, I am sorry I misunderstood perhaps at that point. I thought Mr. Athearn spoke of ground personnel.

Q. You do employ flight radio personnel, don't you?      A. Yes.

Q. When you said a minute ago that these plaintiffs were the best qualified men in the industry as far as you were concerned, why, you were speaking of their qualifications as [252] Flight Radio Officers, is that correct?      A. That is right.

Q. How many Flight Radio Officers do you have at the present time?

A. I believe we have some 38 in the Division at the present time.

Q. Do you know what the date of—I will withdraw that and use the exhibit. When you say, Mr.

(Testimony of Delvin Eugene Axe.)

Axe, you have 38 men, Flight Radio Officers, would you examine Exhibit M?

A. I am not qualified to state which men are on there. I might state my reason for lack of qualification, if you wish.

Q. Let me ask my question. Perhaps you can answer it. Can you tell us which of the men on this list is the junior of the 38 men?

A. That I cannot.

Q. You can't tell?

Mr. Leonard: I wonder if we could have that information, which of the present Flight Radio Officers is junior man so that we can have it indicated on the list who he is.

(Colloquy between counsel and Mr. Poindexter inaudible to the reporter.)

Mr. Leonard: Your Honor please, it will be stipulated between the parties that G. W. Cotterill, whose number of the Defendant's Exhibit M appears as No. 125, and opposite whose name under the head "Seniority Date" appears the date 6/2/41, that [253] that man will be the junior Flight Radio Officer after the 12 men that Mr. Poindexter said were being laid off, will be laid off. In other words, Mr. Cotterill will continue after the lay-off and he will be the junior man.

Mr. Athearn: That is correct.

Q. (By Mr. Leonard): Now, Mr. Axe, at the time you had this conversation concerning which



(Testimony of Delvin Eugene Axe.)

you have testified with Mr. Cummings, what did you say your position was?

A. I was Assistant Communications Manager at that time, and that has since been changed to Division Communications Superintendent.

Q. Did that job embrace supervision? That was a supervisory position? A. That is right.

Q. Did it embrace supervision of ground personnel as well as flight personnel?

A. Yes, sir.

Q. Both groups? A. That is right.

Q. Mr. Cummings, you say, was present with two or three other persons whom you are unable to identify?

A. I don't recall who they were.

Q. You stated to Mr. Cummings after he showed you this memorandum you would honor any commitment Mr. Angus had made?

A. Not quite. I stated I would do my utmost to honor any [254] commitment Mr. Angus might have made.

Q. And he had it directly in his hand when you were discussing it? A. That is right.

Q. Did you at that time advise him or inform him that it had been found no longer necessary to assign him as a Navigator? A. No, I did not.

Q. At the time you knew he was assigned as Navigator, didn't you? A. That is right.

Q. You stated that at that time you would have been able to employ Mr. Cummings as a Flight Radio Officer if he had requested you to do so?

(Testimony of Delvin Eugene Axe.)

A. No, in 1946 we could not have. Later we could have when we added the additional men.

Q. I see. At the time you talked to him you couldn't have placed him as a Flight Radio Officer, is that correct?

A. Perhaps if I may——

Q. Go ahead.

A. ——amplify that answer a bit over a pure yes or no, I can help you. It was our intention at that time—my intention shall I say—to do everything possible to place each of these individuals upon application in the FRO group. At the same time I called their attention to the difficulties of placing them in that group at the time of the conversations. Later we [255] could have placed them, but there was no application.

Q. I understand. Now, if I understand you correctly, you had a discussion with Mr. Cummings in 1946. When in 1946? Can you place the month?

A. I can place it fairly accurately. I would say it was somewhere between the mid-point and later portion of 1946.

Q. Would you say that this defendant's Exhibit M, which is dated, November, 1946, had already been issued or had not already been issued at the time of this conversation?

A. I would say it had not been issued at that time.

Q. The data had been submitted to the Board but the list hadn't come out yet, is that your best recollection?

(Testimony of Delvin Eugene Axe.)

A. I have no information of the date of actually furnishing it to the board.

Q. I think the record shows it was December, 1945.

Mr. Athearn: I think the witness said that this was compiled as of December 31st, 1945, and it was submitted in the early part of 1946.

Q. (By Mr. Leonard): So that this conversation would have been after the early part of 1946?

A. Yes.

Q. And you told Mr. Cummings that you recommended he get back into the FRO group?

A. Yes, I did; and the same statement was directed to the other individuals. They were all there, as I previously stated. [256]

Q. And did you tell Mr. Cummings in order to get back into the FRO group he would have to make an application?

A. That is the usual process, yes.

Q. Did you tell him that?

A. I told him we would take action upon application.

Q. And he had directed your attention to Mr. Angus' memorandum and you said you would honor a commitment made by Mr. Angus to the best of your ability? A. That is right.

Q. And I call your attention to the fact that when you told him that he had better file an application, that there was nothing in Mr. Angus' memorandum about his filing an application?

(Testimony of Delvin Eugene Axe.)

A. No, sir, that didn't enter the discussion. [257]

\* \* \*

Q. Did he direct your attention to that—withdraw that. Did you read the memorandum he was discussing with you? A. Yes, I did.

Q. Were you aware of the fact when you had this discussion with Mr. Cummings that Mr. Angus' commitment provided he would resume his duty as a Flight Radio Officer "in the event it is a temporary nature and it is found not longer necessary to assign you as Navigator."? You were aware of the fact that Mr. Angus' commitment contained that language? A. I was aware of the language, yes.

Q. And you were aware of the fact that at the same time, that the navigation duty he was undertaking, he hadn't been declared by the Company at that time to be temporary?

A. I was aware of the management's intentions. That was the basis of my recommendation.

Q. I see. Did you know that Mr. Cummings was a Check Navigator at that time?

A. I can't say he specifically was or was not.

Q. Did you know during the period in question he was an Assistant Chief Navigator?

A. Yes, I did know that.

Q. Did you know that as Assistant Chief Navigator he was in a second supervisory position in the Navigation Division? A. Yes.

Q. Did you know Mr. Cummings was the man whose duty it was to [258] instruct pilots in navigation and check them on their navigational qualifications? A. Yes.



(Testimony of Delvin Eugene Axe.)

Q. That was the situation that obtained at the time you were talking to him. Then would you say under those circumstances it was no longer necessary to retain him in Navigation in 1946?

A. I am sure that had Mr. Cummings or any of the others in the group applied for a position which might be vacant or become vacant he would have been given every possible consideration.

Q. That is, by you, if he made an application?

A. If I may make this statement, it is always Company policy and has been for many years, if possible to place a man in any position for which he applied and for which he is qualified.

Q. Did you ever discuss with the Chief Navigator, Mr. Cummings' superior in the Navigation Department in the year 1946, whether or not he could spare Mr. Cummings, who was the Assistant Chief Navigator or a Check Navigator?

A. No, I did not.

Q. You had no conception of his duties in the Navigation Department or what was required of him, is that right?

A. I am sure——

Q. Withdraw that question. You don't know what effect it would have had in the Navigation Department had he been released or applied for transfer?

A. Yes. [259]

Q. Were you in the Navigation Department?

A. No, sir, but I was part of management.

Mr. Leonard: I think that is all.

Mr. Athearn: No further questions.

(Witness excused.)



Mr. Athearn: The defendant rests.

Mr. Leonard: May I have just one minute, Your Honor, please?

Mr. Athearn: Your Honor, at this time there have been a series of exhibits which I have offered for identification. Counsel for the plaintiff has been quoting copiously from them, as have I. If possible I would like to make a blanket motion that all of the defendant's exhibits marked for identification but not admitted now be admitted into evidence.

Mr. Leonard: If your Honor please, we have the objection we heretofore made with respect to them. They are relating to matters concerning collective bargaining, and I think the record is clear those that relate to the Flight Radio Officers group in the years 1944 to 1947 when these men weren't part of the group certainly are not binding on them; and those relative to the Navigation group, we submit, are immaterial, based upon the decision of the Court and——

The Court: I will give him a record. They may be admitted and marked, all of them.

Mr. Athearn: There have been several motions to strike that I have made. I hope I can make the motion now. As to [260] what the plaintiff submitted, that is all right. I would like to have the record show we have made the motion.

Mr. Leonard: We, too, have made motions, and for the record we renew the motion to strike.

The Court: Very well. [261]

## Certificate of Reporter

I, Kenneth J. Peck, Official Reporter, certify that the foregoing . . . . page.. is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ KENNETH J. PECK,  
Official Reporter.

[Endorsed]: Filed August 4, 1950. [262]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court or a true and correct copy of an order entered on the minutes of this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the Appellants, to wit:

Petition for Removal of Civil Action, contains copy of Complaint for Damages for Breach of Contract and copy of Summons.

Answer.

Notice of Motion for Leave to File Amendment to Answer.

Minute Order of October 17, 1949—Pre-Trial Conference, Ordered Defendant's Motion to Amend Answer Granted.

Order Directing Amendment of Pleadings and Limiting Issues After Pre-Trial Conference.

Order for Entry of Judgment.

Findings of Fact and Conclusions of Law.

Judgment.

Notice of Appeal.

Designation of Record on Appeal.

Order Extending Time to File Transcript of Record.

Plaintiffs' Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12.

Defendant's Exhibits Nos. A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V and W.

Reporter's Transcript for April 27, 1950.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 7th day of August, 1950.

C. W. CALBREATH,  
Clerk,

[Seal] By /s/ M. E. VAN BUREN,  
Deputy Clerk.

[Endorsed]: No. 12641. United States Court of Appeals for the Ninth Circuit. Aubrey L. Charman, Stanley Cummings, John A. Hrutky and John F. Schwella, Appellants, vs. Pan American Airways, Inc., a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California Southern Division.

Filed August 7, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 12641

AUBREY L. CHARMAN, et al.,  
Appellants,  
vs.

PAN AMERICAN AIRWAYS, etc., et al.,  
Appellees.

MOTION FOR ORDER DISPENSING WITH  
PRINTING OF EXHIBITS

Come now the appellants in the above-entitled cause and through Norman Leonard, Esq., their counsel, and respectfully move the above-entitled Court for an order dispensing with the necessity for printing all of the original exhibits herein, and per-

mitting the said exhibits to be considered and referred to by the Court and counsel as though contained in the printed record on appeal.

This motion is supported by the stipulation of counsel for both appellants and appellee attached hereto.

Dated: August 11, 1950.

GLADSTEIN, ANDERSEN,  
RESNER & LEONARD,

By /s/ NORMAN LEONARD,  
Attorneys for Appellants.

[Title of Court of Appeals and Cause.]

#### STIPULATION RE PRINTING OF EXHIBITS

Whereas, the original exhibits in the above-entitled cause are voluminous and bulky; and

Whereas, a great deal of the relevant portion of said exhibits has been read into the record of the cause and will be printed in the record on appeal; and

Whereas, the proper, expeditious and most economical handling of this cause on appeal would best be served by not printing said exhibits but by permitting said exhibits to be referred to by the Court and the parties hereto as though they were actually printed and incorporated in the record on appeal; now therefore,

It Is Hereby Stipulated by and between the parties above-named, through their respective counsel, that the above-entitled Court may make its order



granting the Motion for Order Dispensing with  
Printing of Exhibits.

Dated: August 10, 1950.

GLADSTEIN, ANDERSEN,  
RESNER & LEONARD,

By /s/ NORMAN LEONARD,  
Attorneys for Appellants.

ATHEARN, CHANDLER,  
HOFFMAN & ANGELL,

By /s/ LEIGH ATHEARN,  
Attorneys for Appellee.

It Is So Ordered:

/s/ WILLIAM DENMAN,  
United States Circuit Judge.

/s/ CLIFTON MATHEWS,  
United States Circuit Judge.

/s/ WILLIAM HEALY,  
United States Circuit Judge.

[Endorsed]: Filed August 14, 1950.

[Title of Court of Appeals and Cause.]

APPELLANTS' DESIGNATION OF  
POINTS ON APPEAL

Come now appellants and state the following as the points upon which they intend to rely on the appeal in the above-entitled cause:

1. The evidence does not support the Findings of Fact.

2. The Findings of Fact do not support the Conclusions of Law.

3. The Findings of Fact are not consistent with each other.

4. The Findings of Fact and the Conclusions of Law do not support the Judgment.

5. The trial court erred in finding that the written memoranda of January 21, 1941, between appellants and appellee did not constitute an agreement and undertaking by appellee.

6. The trial court erred in finding that the written memoranda of April 22, 1943, between appellants and appellee did not constitute an agreement and undertaking by appellee.

7. The trial court erred in failing to find that the appellee breached of the aforesaid agreements and undertakings.

8. The trial court erred in finding that the appellants did not show that they had suffered any damage by way of lost wages or by way of loss of

seniority privileges, severance pay privileges and other privileges by reason of their not being re-employed by the appellee.

9. The trial court erred in finding that the agreement of January 4, 1945, between the Pan American Airway Navigators Association and appellee replaced, superceded and was a novation of the previous agreements between appellants and appellee, and was so understood and reasonably would be so understood.

10. The trial court erred in finding that the rights of appellants under the memoranda of January 21, 1941, and April 22, 1943, were replaced, superceded and subject to a novation by the agreement of January 4, 1945, and that appellants had no rights to seniority and reinstatement save and except as provided in the agreement of January 4, 1945.

11. The trial court erred in failing to find that the appellants were not bound by the seniority list of November 19, 1946, which resulted from collective bargaining and mediation between the Flight Radio Officers Association and the appellee.

12. The trial court erred in failing to find that the appellants never saw the aforesaid seniority list.

13. The trial court erred in finding that, even if each of the appellants had been placed upon the aforesaid seniority list, none of them would have sufficient accrued seniority thereunder to have made him eligible for reinstatement in employment as a Flight Radio Officer.

14. The trial court erred in finding that men with greater accrued seniority than any of the appellants were unable to obtain employment because of lack of available positions.

15. The trial court erred in finding that the appellee is prevented by law from employing any of the appellants as a Flight Radio Officer.

16. The trial court erred in failing to find that had the appellee not breached its agreements of January 21, 1941, and April 22, 1943, with each of the appellants, each of the appellants would have been entitled to a place in the system seniority list which would have insured his reemployment in December of 1948, and his continuous employment at least to the time of trial and for an indefinite period of time thereafter.

17. The trial court erred in finding appellee has offered to each of appellants employment in the Communications Department of appellee at a grade commensurate with the length of service of each of said appellants, and that each of said appellants refused and declined to accept said offers when made.

18. The trial court erred in finding that the agreement of July 14, 1948, submitted to a board of arbitration for decision the question of what rights of seniority or retention of employment each of the appellants might have as against appellee.

19. The trial court erred in finding that the arbitration award of November 10, 1948, constituted

a determination of the rights of seniority or rights of retention of employment which each of the appellants might have as against appellee.

20. The trial court erred in finding that the contractual rights of each of the appellants arising from the written memoranda between each of them and the appellee of January 21, 1941, and April 22, 1943, were subject to the agreement between appellee and the Transport Workers Union of America of July 14, 1948, or were subject to the arbitration award of November 10, 1948.

Respectfully submitted,

GLADSTEIN, ANDERSEN,  
RESNER & LEONARD,

By /s/ NORMAN LEONARD,  
Attorneys for Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed August 16, 1950.